

DRAFT AMENDMENT

**TOWN OF WINTHROP
ORDINANCE ESTABLISHING A MORATORIUM ON MINERAL EXPLORATION,
MINERAL EXTRACTION, ROCK QUARRY EXCAVATION, AND SAND AND
GRAVEL PIT ACTIVITIES**

WHEREAS, the Town Council of the Town of Winthrop (the “Town”) makes the following findings:

- (1) Mineral exploration and extraction are allowed uses in certain districts in the Town requiring Planning Board approval as shown in the land use table of the Zoning Ordinance, and the Zoning Ordinance includes certain performance standards for such uses.
- (2) The Zoning Ordinance does not currently define or regulate rock quarry excavation or sand and gravel pit activities or include performance standards for such land uses.
- (3) There has been an increase in a desire to pursue mineral exploration, mineral extraction, rock quarry excavation or sand and gravel pits in Town.
- (4) The Town has several concerns regarding the location and operation of mineral exploration, mineral extraction, rock quarry excavation, or sand and gravel pit activities and the potentially serious implications on the health, safety and welfare of the Town and its residents, including questions as to the compatibility with existing land uses and developments and the potential effect on air and water quality.
- (5) The Town’s existing ordinances do not provide an adequate mechanism to regulate and control mineral exploration, mineral extraction, rock quarry excavation, or sand and gravel pit activities and are inadequate to prevent the potential for serious public harm from the future establishment of such uses.
- (6) The Town needs a reasonable amount of time to study the land use implications of mineral exploration, mineral extraction, rock quarry excavation, and sand and gravel pit activities to develop reasonable regulations governing their location and operation.
- (7) During the period of this Moratorium, the Town will work on developing appropriate land use regulations and performance standards concerning mineral exploration, mineral extraction, rock quarry excavation, and sand and gravel pit activities.
- (8) In the judgment of the Town Council, the forgoing findings and conclusions constitute an emergency within the meaning of Section 213 of the Town Charter requiring immediate legislative action.

NOW THEREFORE, pursuant to 30-A M.R.S. § 4356, be it ordained by the Town Council as follows:

Section 1. Moratorium. The Town does hereby declare a moratorium on the location, operation, permitting, approval, or licensing of any and all mineral exploration, mineral extraction, rock quarry excavation, and sand and gravel pit activities within the municipality.

No person or organization shall develop, begin operation, or engage in mineral exploration, mineral extraction, rock quarry excavation, or sand and gravel pit activities within the Town on or after the effective date of this Ordinance.

During the time this Ordinance is in effect, no officer, official, employee, office, administrative board, or agency of the Town shall accept, process, approve, deny, or in any other way act upon any application for a license, building permit, conditional use permit, any other type of land use approval or permit and/or any permit or license related to mineral exploration, mineral extraction, rock quarry excavation, or sand and gravel pits.

Section 2. Definitions. For the purposes of this Ordinance, the following terms have the following meanings.

~~**Department** – means the Department of Environmental Protection.~~

Mineral Exploration - means the following activities when conducted in accordance with rules adopted by the department for the purpose of determining the location, extent, and composition of metallic mineral deposits: test boring, test drilling, hand sampling, the digging of test pits, trenching, or outcrop stripping for the removal of overburden having a maximum surface opening of 300 square feet per test pit or trench, or other test sampling methods determined by the department to cause minimal disturbance of soil and vegetative cover, and which include reasonable measures to restore the land to its original condition.

Mineral Extraction - means activities, facilities, sites, areas, parcels, or processes necessary for the extraction or removal of metallic minerals or overburden or for the preparation, washing, cleaning, or other treatment of metallic minerals, and includes the bulk sampling, advanced exploration, extraction, beneficiation, or transport of metallic minerals, as well as waste storage and other stockpiles and reclamation activities, but does not include mineral exploration.

Rock Quarry Excavation - means activities, facilities, sites, areas, working pits, parcels, or processes necessary for the excavation of rock or overburden at a quarry, including excavation by surface blasting, production blasting, or underground production blasting, or for the crushing, washing, cleaning, beneficiation, or transport of extracted rock, as well as waste storage and other stockpiles and reclamation activities.

Sand and Gravel Pit - means the extraction area, including side slopes, of an excavation for sand, gravel, borrow, clay, silt, or topsoil, whether alone or in combination, and

includes all related activities, facilities, sites, areas, parcels, or processes necessary for the excavation or transport of sand, gravel, borrow, clay, silt, or topsoil, as well as reclamation activities, but does not include a stockpile area or an area that has a permanent fixed structure such as an office building, permanent processing facility or fixed fuel storage structure.

Section 3. Pending Proceedings. Notwithstanding 1 M.R.S. § 302 or any other law to the contrary, this Ordinance shall govern any and all proposed mineral exploration, mineral extraction, rock quarry excavation, and sand and gravel pit activity for which an application for a building permit, conditional use permit, notice of intent to comply, notification of intent to expand, certificate of occupancy, site plan, or any other required approval has been submitted to the Town ~~or the department~~, whether or not a pending proceeding, prior to the enactment of this Ordinance.

Section 4. Conflicts/Savings Clause. Any provisions of the Town's ordinances that are inconsistent or conflicting with the provisions of this Ordinance are hereby repealed to the extent applicable for the duration of this moratorium. If any section or provision of the Ordinance is declared by any court of competent jurisdiction to be invalid, such a declaration shall not invalidate any other section or provision.

Section 5. Violations. If any mineral exploration, mineral extraction, rock quarry excavation, or sand and gravel pit activity is established or conducted in violation of this Ordinance, each day of any continuing violation shall constitute a separate violation of this Ordinance and the Town shall be entitled to all rights and remedies available to it pursuant to 30-A M.R.S. § 4452 including, but not limited to, fines and penalties, injunctive relief, and its reasonable attorney's fees and costs in prosecuting any such violations.

Section 6. Effective Date. This Ordinance shall become effective ~~immediately~~thirty (30) days- upon its adoption pursuant to Section 213 of the Charter and shall remain in full force and effect for a period of 180 days thereafter, unless extended pursuant to law or until a new and revised set of regulations is adopted by the Town, whichever shall first occur.

~~(Drafter's Note: All definitions in this version are derived from applicable provisions in 38-M.R.S.)~~