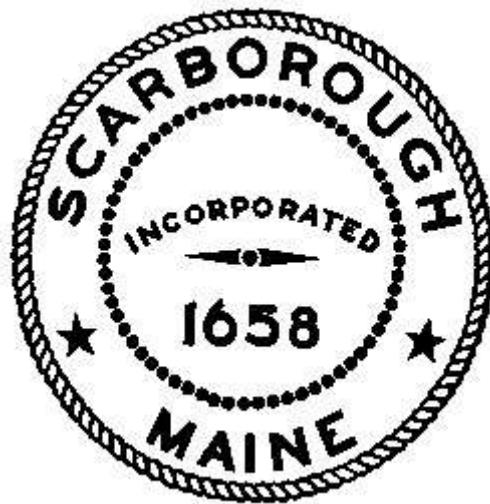


CHAPTER 408

TOWN OF SCARBOROUGH

EXTRACTIVE INDUSTRY

AND LAND RECLAMATION ORDINANCE



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CHAPTER 408

TOWN OF SCARBOROUGH

EXTRACTIVE INDUSTRY AND LAND RECLAMATION ORDINANCE

Section 1. TITLE

This ordinance shall be known and may be cited as the "Extractive Industry and Land Reclamation Ordinance of the Town of Scarborough, Maine."

Section 2. PURPOSE AND INTERPRETATION

This ordinance regulates the operation of extractive industries and land reclamation projects; defines extractive industry and land reclamation, requires approval by the Planning Board of Extractive Industries and land reclamation projects before any work may commence, and establishes procedures therefore; establishes the minimum standards for project design and operation; and prescribes penalties for the violation of its provisions. In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements. Nothing in this ordinance shall prohibit the Planning Board from imposing stricter standards when deemed necessary to accomplish the purpose of the ordinance.

Section 3. DEFINITIONS

For the purpose of this ordinance, certain terms used herein are defined as follows:

Extractive Industry:

The removal of top soil, rock, sand, gravel, and similar earth materials, or mining operations except as is incidental to any other activity conducted pursuant to receipt of a permit issued by the Town of Scarborough.

Land Reclamation:

Any action which restores land to its natural state or allows full utility of land, except as is incidental to any other activity conducted pursuant to a permit issued by the Town of Scarborough.

Active Status:

Active status for extractive industries shall mean the operation of an extractive industry for remuneration for at least six months per year for the three year period immediately preceding the effective date of this ordinance. The board shall require evidence which may include cash receipts, affidavits, verbal testimony, photographs, or other information to be presented on which to grant active status.

Rehabilitation Plans:

Rehabilitation plans shall be plans that identify the intent of the owner of any extractive industry to rehabilitate the site of an extractive industry to a natural state by filling, landscaping, or other

means acceptable to the Planning Board. Such plans shall conform to the requirements contained herein.

Section 4. EXTRACTIVE INDUSTRIES

4.1 Within ninety days from the effective date of this ordinance all owners of extractive industries operating within the Town of Scarborough must formally declare to the Planning Board in writing whether they are actively functioning or whether they have become inactive. Failure to file such a declaration within the specified period shall constitute a declaration of inactive status. Substantiating evidence must accompany any claim of active status, and the Board shall in each instance determine whether active status has been demonstrated.

4.2 Any inactive extractive industry shall not resume active status, nor shall it be the site of a land reclamation project until it has complied fully with this ordinance and all other state and local regulations.

4.3 Within ninety days of a claim of active status, the owner of any extractive industry shall file the necessary plans and reports to comply with the provisions of this ordinance unless otherwise provided for herein. Failure to file the necessary plans and reports within the specified time period shall nullify the active status and constitute a declaration of inactive status.

4.4 The removal or deposit of any material at the site of an inactive extractive industry is strictly prohibited except in conformance with the terms of this ordinance.

Section 5. LAND RECLAMATION PROJECTS

5.1 Land reclamation projects may be undertaken only in conformance with this ordinance.

5.2 The reclamation of inactive gravel pits for open space, tree farming, or conservation purposes which comply with the requirements of the Tree Growth Tax Law or Farm and Open Space Land Law shall be encouraged and no fee shall be charged to an applicant for such a project.

Section 6. ADMINISTRATION

6.1 The Planning Board of the Town of Scarborough, herein after called the Board, shall administer this ordinance.

6.2 Before any extractive industry or land reclamation, sometimes hereinafter called project, is proposed or before any permit for the erection of any structures within such projects shall be granted, or before any utility installations, ditching, grading, construction of roads, or excavating shall be done on any project, the project owner shall apply formally to the Board for approval of a plan of such project, which plan shall be in conformance with the standards and specifications as set forth in this ordinance.

6.3 As to any intended project, the owner shall prepare and formally submit to the Board both a preliminary plan for study, and modification where required and a final plan. The final plan shall

not be prepared until the owner has received from the Board written notice that a majority of the Board has approved the preliminary plan of such a project.

6.4 No proposal for an extractive industry or reclamation project shall be approved by the Planning Board until after the Board shall have held a public hearing thereon. Public Notice of the hearing shall be made at least ten (10) days prior to such hearing, and shall be advertised in at least one newspaper in general circulation in the Town.

Section 7. GENERAL REQUIREMENTS

7.1 Any proposed project shall be in conformity with the comprehensive plan of the Town of Scarborough, and with the provisions of all pertinent state and local codes and ordinances.

7.2 Any proposed project shall be reviewed by the Board with regard to its impact upon the natural environment, and shall not adversely affect or destroy the ecological balance of any area.

In order to approve an application, the Board must find based upon the information presented to it by the applicant and other interested parties that the proposed project:

- a. will not result in unsafe or unhealthful conditions;
- b. will not result in erosion of sedimentation;
- c. will not result in water pollution;
- d. will conserve vegetation;
- e. will conserve natural beauty;
- f. will avoid problems associated with flood plain development and use;
- g. will avoid hazards due to steep slopes;
- h. will avoid problems due to standing water; and
- i. will avoid problems due to gas generation.

The Planning Board may at the owner's expense engage a certified engineer of its choice to develop detailed plans in accordance with the provisions of this ordinance.

7.3 Any project proposal shall be accompanied by a report regarding site geology, hydrology, and soil conditions; source and pertinent engineering properties of fill and cover materials; types and numbers of equipment to be used for excavating, earth moving, spreading, compacting, and other purposes, persons responsible for the actual operation and maintenance of the site, and intended operating procedures, and the ultimate plan and proposed use of the completed site.

7.4 Any proposed project shall be reviewed by the Board with respect to its impact on existing land uses.

7.5 Any proposed project shall be reviewed by the Board with respect to its impact on existing transportation facilities.

7.6 Sufficient top soil or loam shall be retained to cover all areas, or other provisions must be made to the Board's satisfaction within the rehabilitation plans.

7.7 If any portion of the site has been identified as containing historic or archaeological resources, the Board will require appropriate measures for protecting these resources, including but not limited to, modification of the proposed design of the site, timing of construction, and limiting the extent of excavation.

7.8 The plan review by the Planning Board shall take into consideration, but is not limited to the following items:

- a. fencing, landscaping buffer strips, public safety;
- b. advertising signs and lighting;
- c. parking space, loading and unloading areas;
- d. entrances and exists;
- e. time period for operation;
- f. hours of operation;
- g. methods of operation;
- h. weight and loading limit of trucks;
- i. sand and gravel spillage upon public streets;
- j. rehabilitation plans (per Section 11 below); and
- k. ecological and other natural consideration.

7.9 The Board shall impose such conditions as necessary to safeguard the health, safety and welfare of the community. No new project shall be approved that involves excavating below the seasonal high water table, or that result in, standing water.

Section 8. PRELIMINARY PLAN REQUIREMENT AND PROCEDURES

8.1 A request for approval of any project shall be made to the Board in writing, and shall be accompanied by a preliminary plan which shall be drawn at no smaller scale than 100 feet to the inch. The preliminary plan shall be accompanied by a location map showing the relationship of the proposed project to adjacent properties.

8.2 When practical a standard sized sheet 24" X 36" shall be used for all plans and shall contain at least the following information:

- a. Name of project; owner(s) and engineer(s) or surveyor(s);
- b. Graphic scale, date and north point;
- c. Existing zoning;
- d. Ownership and location of abutting properties;
- e. Type, location, profile and cross section of all existing and/or proposed surface water; drainage;
- f. Location of all existing and/or proposed utilities (water, gas, electricity, and other);
- g. Existing and proposed topography at no less than five foot contour intervals, unless otherwise prescribed by the Board;
- h. Proposed use of property at completion of the project;
- i. Provisions must be made to avoid hazards from excessive slopes and to avoid standing water. Where an embankment must be left upon completion of operations at a location within the project, it shall be at a slope not steeper than 1 foot vertical to 4 feet horizontal;
- j. The operation must be shielded from surrounding property with adequate screening and create no disturbance of water sources;
- k. The operation when terminated shall not detract from the appearance or value of nearby property;
- l. The edge of all workings shall be set back from the property lines a minimum of 200 feet. When encroachment has been made within 200 feet of a property line, the Board shall require corrective measures to protect adjacent properties;
- m. No excavation shall be extended below the grade of adjacent streets unless two hundred feet from the street line.

8.3 In addition to the preliminary plan the Board may require the owner or others to undertake studies where it is deemed necessary or desirable by the Board. Said studies are to be undertaken at the owner's expense.

8.4 An application for approval of a Preliminary Plan shall be considered at a regular meeting of the Board within 30 days of receipt of such application.

8.5 The final plan shall be submitted by the owner to the Board for review within 60 days from the granting of preliminary approval. Failure to do so shall constitute a withdrawal of the application.

8.6 The Preliminary Application shall be accompanied by an engineering opinion, in form and content satisfactory to the Planning Board, and other technical information required by the Board to make the necessary findings under Section 7.2. The cost of obtaining this information shall be borne by the owner.

Section 9. FINAL PLAN REQUIREMENTS AND PROCEDURES

9.1 A request for final approval of a project shall be made to the Board in writing and shall be accompanied by a final plan of such project legibly drawn in black ink on permanent transparency material together with three dark lined copies. The plan shall be drawn at no smaller scale than 100 feet to the inch or as otherwise prescribed by the Board as being adequate to show all details clearly.

9.2 The plan shall be presented on one or more sheets of standard 24" X 36" size and shall contain the following information:

- a. All information required in the Preliminary Plan and amendments thereto requested by the Board;
- b. Existing and final proposed lines of streets, easements for utilities and drainage and any areas to be dedicated to the public;
- c. Sufficient data to determine the exact location, direction, and length of every street line, easement, property line drainage facility, reproduce these lines upon the ground;
- d. Location of all permanent monuments existing and/or proposed wherever in the opinion of the Board, such monuments are necessary to properly determine the location on the ground of any street line easement, property line or drainage facility;
- e. Designation of the location, size, planting and landscaping of such areas as may be proposed or prescribed as necessary to the prevention of erosion or sedimentation, to provide appropriate visual screens or buffer strips, and to enhance the final appearance and utility of the site;
- f. The seal of the registered engineer, surveyor, planner or other professional person responsible for the preparation of the plans, application, and supporting documentation.

9.3 The final plan shall be accompanied by certification from authorized local public officials and/or agencies, and appropriate state officials and/or agencies that the design of facilities, drainage, streets, and utilities, and overall project designs conform to the requirements of all pertinent state and local codes and ordinances. The cost of certification and/or inspection shall be borne by the owner.

9.4 The Board shall consider a final plan at a regular meeting within 30 days of submission of such final plan.

9.5 The approval of a final plan shall be attested to on the original tracing cloth and three copies by the signature of a legal majority of the Board.

9.6 A tracing of the final plan as approved shall be retained by the Board. The owner shall record the approved final plan with the Cumberland County Registry of Deeds within 30 days of its approval by the Board.

Section 10. REHABILITATION PLANS

10.1 All extractive industries which apply for and are granted active status as provided for in this ordinance shall submit a rehabilitation plan to the Board for approval. Such a rehabilitation plan may with the Board's approval be incorporated into the preliminary and final plans. The rehabilitation plans shall include as a minimum the following:

- (1) A vegetative plan, which shall meet the minimum requirement established by the Maine Soil and Water Conservation Commission as specified in the "Maine Erosion and Sediment Control, On Commercial, Industrial, Residential, Recreation, and Governmental Construction Sites Environmental Quality Handbook", dated June 1974.
- (2) All surface areas affected shall be graded and slopes shall not be steeper than 1 foot vertical to 4 feet horizontal.
- (3) All grubblings shall be removed from the site or buried.
- (4) All loamed, seeded, and planted areas shall be guaranteed for eighteen months during which time the performance guarantee required under Section 11 shall remain in full force and effect.
- (5) Provisions must be made to provide trees for a visual and acoustical buffer between the project and adjacent properties. The number and location of the trees shall be approved by the Board.
- (6) All exposed slopes shall be graded and where practical, as determined by the Board, planted, loamed, seeded, or otherwise landscaped. Sufficient top soil or loam shall be retained to cover all areas or other provisions made to the Board's satisfaction within the rehabilitation plan. Such provisions shall be shown in the vegetative plan. (Item 1 above).
- (7) Where standing water is present the following requirements shall be met
 - (a) The water supply shall be from natural springs or natural streams, brooks, or rivers, but in no event from storm drains or intermittent surface drainage ditches;
 - (b) All storm drains or intermittent surface drainage ditches shall be diverted away from areas rehabilitated by means of natural water fill;

(c) An outlet may be required by the Board to assure a proper cycling of the water supply in the rehabilitated area;

(d) The Board may require testing of the water in the rehabilitated area for the purpose of detecting unsanitary, unsightly, or odoriferous conditions. Should such conditions be detected the Board may require the owner to take appropriate corrective measures.

(e) The owner shall file evidence of insurance with the Town Clerk annually against liability arising from the use of the extractive industry areas rehabilitated by means of natural water fill in an amount of not less than \$50,000 for as long as the site remains a water filled area; and

(f) Grading and restoration shall be completed in such a manner that will insure proper natural drainage and prevent erosion.

(g) In instances where standing water is present grades left under the high water level shall be at a slope not steeper than one foot vertical to eight feet horizontal for the first ten feet (measured horizontally), and one foot vertical to four feet horizontal for the next thirty feet (measured horizontally).

(8) Access to the site of the project shall be controlled by the installation of gates and signs. Gates shall be located on all access roads and driveways, and shall be closed and locked whenever the owner or her/his authorized agents are not present on the premises. Signs shall be posted advising that the property is the site of a rehabilitated extractive industry and hazards may be encountered by trespassers; and [amended 11/01/17]

(9) The owner shall be responsible for the continued maintenance of the area and compliance with the rehabilitation plans.

Section 11. PERFORMANCE STANDARDS

11.1 In order to insure compliance of the project in conformance with the approved plans the owner shall furnish to the Town Treasurer at the time of submission of the final plan, a performance guarantee. Said performance guarantee may be in the form of cash, certified check payable to the Town of Scarborough, or a performance bond, naming the Town of Scarborough as obligee, issued by a corporate surety licensed to do business within the State of Maine. The amount of such performance guarantee shall be approved by the Board and the Town Treasurer and shall be in an amount at least equal to the total cost of completing all site work and rehabilitation in conformance with the approved plans within five years of the date of approval of the final plan.

11.2 The Board may grant an extension not to exceed 12 months beyond the guaranteed performance period when the owner can demonstrate to the satisfaction of the Board, cause for such extension provided however, that the performance guarantee shall remain in full force and effect.

11.3 Before the owner may be released from any obligation required by her/his guarantee of performance, the Board shall require certification from the various departments and agencies concerned to the effect that all improvements have been satisfactorily completed in accordance with all applicable standards, state and local codes and ordinances. [amended 11/01/17]

11.4 Any project which is proposed to operate for a period of time in excess of five years shall be designed to operate in phases. The applicant shall provide a performance guarantee for each phase of the work. No work shall commence on additional phases until the Planning Board has been satisfied that the completed phase conforms fully with the approved plans, and a new performance guarantee is presented.

Section 12. FEES

12.1 Prior to the submission of a preliminary plan the applicant shall pay to the Town Treasurer a fee for the review of the plan. Said fee shall be non-refundable and shall be computed as follows:

12.2 A fee as specified in the Schedule of License, Permit and Application Fees established by the Town Council, shall be paid.

12.3 No fee shall be charged to projects enumerated under Section 5.2.

Section 13. VALIDITY AND CONFLICT OF ORDINANCES

13.1 In the event that any section, subsection or any portion of this ordinance shall be declared by any competent court to be invalid for any reason, such decision shall not be deemed to affect the validity of any other section, subsection or other portion of requirement shall prevail.

13.2 In the event that any provision of this ordinance is in conflict with any other federal, state, or local statute, ordinance or regulations, the provisions which establish the most stringent requirement shall prevail.

Section 14. EXEMPTIONS

14.1 The provisions of this ordinance do not apply to individuals reclaiming lands where the volume to be filled or reclaimed is less than five hundred (500) cubic yards. Further, the provisions of this ordinance shall not apply to extraction or filling incidental to or associated with activities in conformance with and undertaken pursuant to a valid permit issued by the Town of Scarborough.

14.2 Owners of extractive industries existing at the effective date of this ordinance who apply for and are granted active status shall be exempt from the provisions of Section 7, 8, and 9 of this Ordinance.

14.3 The provisions of this ordinance do not apply to projects undertaken by the Town of Scarborough.

Section 15. EFFECTIVE DATE

This ordinance shall take effect and be in force from and after the date of its official adoption by the Town of Scarborough. Adopted July 5, 1978.

Section 16. PENALTIES

16.1 Any person, firm or corporation being the owner of or having control or use of any building or premises who violates any of the provisions hereof, shall be guilty of a misdemeanor, and on conviction thereof shall be fined not less than \$500.00 or more than \$5,000.00 each thereof shall constitute a separate offense. All fines collected hereunder shall inure to the Town of Scarborough.

16.2 As an additional remedy, any violation of this ordinance, or any of the provisions or regulations incorporated herein, shall be deemed and are declared to be a nuisance and may be subject to abatement by restraining order or injunction issued by a court of competent jurisdiction.

**Section 17. TOWN ENGINEER PERMITS FOR EXCHANGE OF EARTH MATERIALS
[November 16, 2005] [Repealed June 30, 2006]**