

APPENDIX A  
ORDINANCE NO. 36

**ORDINANCE NO. 36  
CITY OF RED WING  
COUNTY OF GOODHUE  
STATE OF MINNESOTA**

***AN EMERGENCY ORDINANCE AMENDING ORDINANCE NO. 20, FOURTH SERIES, BY EXPANDING THE SCOPE OF THE INTERIM MORATORIUM ON THE ISSUANCE OF PERMITS FOR THE ESTABLISHMENT OF NEW SILICA/FRAC SAND MINING OPERATIONS TO INCLUDE ADDITIONAL LAND USES SUCH AS THE LOADING, UNLOADING, STORAGE, WAREHOUSING, STOCKPILING, AND PROCESSING OF SILICA/FRAC SAND WITHIN THE CITY DURING THE MORATORIUM PERIOD***

**PREAMBLE**

On October 10, 2011, the Red Wing City Council enacted an interim ordinance placing a moratorium on the issuance of permits for the establishment of a new silica/frac sand mining operation (resource extraction land use), and prohibiting their location within the City in order to permit the planning process to take place and to allow the Red Wing Advisory Planning Commission and the City Council to proceed in an orderly fashion to adopt permanent Zoning Ordinance provisions regulating this land use.

The City Council believes that an interim ordinance placing a moratorium on the uses of loading, unloading, storage, warehousing and/or stockpiling of silica/frac sand within the City is also necessary to protect the health, safety, morals, and general welfare of the citizens of the community. The current interim ordinance does not cover these uses, so additional action is necessary. The Council has learned that the additional uses that it wishes to study may begin in the very near future. The Council's process for enacting a non-emergency ordinance may take a month or longer. Thus, that process may not be completed before the uses that the Council wishes to study begin.

Thus, the City Council hereby declares this situation to constitute an emergency as that term is used in Section 5.08 of the Red Wing City Charter.

WHEREAS, pursuant to Section 5.08 of the Red Wing City Charter, the City may enact an emergency ordinance when doing so is necessary for the immediate preservation of the public peace, health, morals, safety or welfare; and

WHEREAS, it would be detrimental to the health, morals, safety and welfare for the citizens of Red Wing to allow the loading, unloading, storage, warehousing and/or stockpiling of silica/frac sand within in the City while the Red Wing Advisory Planning Commission is studying what permanent controls, if any, are recommended.

NOW THEREFORE the City Council of the City of Red Wing does ordain:

**SECTION 1:** Ordinance No. 20, Fourth Series is hereby amended by deleting the ~~overstruck~~ language and inserting the underlined language:

**Ordinance No. 20, Fourth Series**

***AN INTERIM ORDINANCE PLACING A MORATORIUM ON THE ISSUANCE OF PERMITS FOR THE ESTABLISHMENT OF A NEW SILICA/FRAC SAND MINING OPERATIONS (RESOURCE EXTRACTION LAND USE), AND PROHIBITING THEIR LOCATION, AS WELL AS THE LOADING, UNLOADING, STORAGE, WAREHOUSING, STOCKPILING, AND PROCESSING OF SILICA/FRAC SAND WITHIN THE CITY WHILE THE MORATORIUM IS IN EFFECT***

THE CITY COUNCIL OF THE CITY OF RED WING DOES ORDAIN:

Section 1 PURPOSE AND INTENT

The City Council finds that an interim ordinance placing a moratorium on the location and establishment of new silica/frac sand mining operations (resource extraction land use), as well as a moratorium on the loading, unloading, storage, warehousing, stockpiling, and processing of silica/frac sand within the City of Red Wing is necessary to protect the health, safety, morals, and general welfare of the citizens of the community; and

The City Council finds that an interim ordinance placing a moratorium on the location and establishment of new silica/frac sand mining operations (resource extraction land use) as well as a moratorium on the loading, unloading, storage, warehousing, stockpiling, and processing of silica/frac sand within the City of Red Wing is necessary in order to permit the planning process to take place and to allow the Red Wing Advisory Planning Commission and the City Council to proceed in an orderly fashion to adopt permanent Zoning Ordinance provisions regulating this land use.

Section 2 AUTHORITY

This Ordinance is adopted pursuant to that authority granted in Minn. Stat. § 462.355, entitled "Interim Ordinance."

Section 3 DEFINITIONS

For purposes of this Ordinance, "silica/frac sand" is defined as silica/frac sand used for the hydrofracking process. Characteristics of silica/frac sand include: spherical shape,

high silica (quartz) content, hardness (can withstand high pressure), uniform particle shape and larger grain size.

The City Council hereby directs City staff to study and prepare Zoning Ordinance provisions regulating the location and establishment of new silica/frac sand mining operations (resource extraction land use) as well as additional land uses such as the loading, unloading, storage, warehousing, stockpiling, and processing of silica/frac sand within the City of Red Wing. City staff is further directed to report the results of their studies and recommendations along with the recommendations of the Red Wing Advisory Planning Commission as soon as the Commission has completed its studies and recommendations.

#### Section 4 VIOLATION

The City may enforce any provision of this Ordinance by mandamus injunction or other appropriate civil remedy in any court of competent jurisdiction.

#### Section 5 SEVERABILITY

Every section, provision, or part of this Ordinance is declared severable from every other section, provision, or part thereof to the extent that if any section, provision, or part of this ordinance shall be held invalid by a court of competent jurisdiction, it shall not invalidate any other section, provision, or part thereof.

#### Section 6 TIME PERIOD AND EXPIRATION~~EFFECTIVE DATE~~

The moratorium enacted by this Ordinance shall be in effect for a period of one year from the effective date of this Ordinance. ~~This ordinance shall be in full force and effect 14 days after its adoption and publication in accordance with the City Charter. This moratorium shall expire at 11:59 p.m. on October 28, 2012.~~

#### Section 7 EFFECT OF AMENDMENTS

Any amendments made to this Ordinance, including amendments expanding the scope of the moratorium to include additional land uses, are not intended to extend the time period and expiration of the moratorium set forth in Section 6 of this Ordinance.

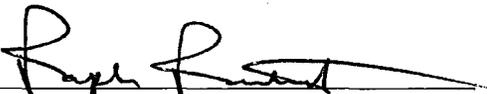
**SECTION 2: Moratorium Time Period Not Extended.** This Ordinance is not intended to extend the 12-month time period and expiration date of the moratorium as set forth in Ordinance No. 20, Fourth Series, as amended.

**SECTION 3: Update to Uncoded Ordinance Provision of City Code.** The City Clerk is hereby directed to update the reference to Ordinance No. 20, Fourth Series contained in

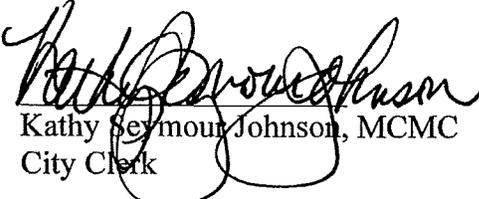
Section 25.21 of the City Code to read: "Ordinance No. 20, Fourth Series, adopted October 10, 2011, as amended by Ordinance No. 36, Fourth Series, adopted June 11, 2012, enacts a 12-month moratorium on the location and establishment of new silica/frac sand mining operations (resource extraction land use), as well as the loading, unloading, storage, warehousing, stockpiling, and processing of silica/frac sand within the City of Red Wing."

**SECTION 4: Effective Date.** This emergency ordinance shall take effect immediately upon its adoption consistent with Sections 5.08 and 5.11 of the City Charter.

Adopted this 11<sup>th</sup> day of June, 2012.

  
Ralph Rauterkus, Chairperson

ATTEST:

  
Kathy Seymour Johnson, MCMC  
City Clerk

(seal)

Presented to the Mayor at 8:52 p.m. on this 11<sup>th</sup> day of June 2012. Approved this 11<sup>th</sup> day of June, 2012.

  
Dennis Egan, Mayor

RRM: #165103

## APPENDIX B

### 5.7 SAMPLE SPECIAL PROVISIONS

## Purpose of the Special Provisions

The Purpose for the Special Provisions Section of the City of Red Wing Zoning Codes as relating to Non-Metallic Resource Extraction is to provide minimum standards for all resource extraction operations within city limits in order to protect public health and safety, to preserve the scenic beauty of Red Wing's landscapes and environment, to protect the public from damage to both the quality and quantity of ground and surface waters, to minimize or prevent adverse impacts from on-site and off-site operations, and to promote the general welfare of the people of Red Wing and the surrounding communities.

## APPLICATION

All applicants must submit the following

1. Name, address, phone number(s), e-mail address, website of the operator of the nonmetallic mining operation.
2. Name, addresses, phone number(s), and e-mail addresses of all owners or lessors of the land on which the mining operation will occur
3. Location of road access points. The proposed location within the site of all buildings and other structures, equipment, stockpiles, storage and parking areas.
4. Blueprints of proposed mining operations, blasting sites, tunneling plan, aerial maps, USGS maps, map locations of storage areas, wash areas, pond areas, overburden collection areas.

5. Identification of ALL proposed off-site trucking routes, together with the frequency of traffic and the common schedule of travel to be used for transporting extracted materials or products to and from the site.
6. A water budget, including an estimate of the amount of daily water use, water sources, and methods for disposing of water. Descriptions of methods used for filtration and control of water run-off are to be included also.
7. A listing of any hazardous materials, including all fuel supplies that will be stored on site and a description of measures to be used for securing and storing these materials.
8. A listing of all chemicals used in the manufacture or processing operations and in controlling dust.
9. The operator shall provide the information necessary to demonstrate that the mining operation will comply with the minimum standards (listed within the minimum standards section of the special provision section)
10. The operator will agree prior to commencement of operations to sign an agreement with the City of Red Wing to contract an independent 3<sup>rd</sup> party entity at the City of Red Wing's choosing and operator full expense. The contracted party will establish a baseline of data in order to be able to accurately assess and inspect the mining operation throughout the duration of continued operations. These baseline requirements include
  - Groundwater elevation at site
  - Groundwater quality comprehensive tests including lead, arsenic, and any other toxic metals that may be present in the area or in the type of deposit from which the extraction will be made.
  - The base flow of surface water within ½ mile of the site
  - Well testing of property owners within ½ mile of the site

- Air quality tests at the proposed mine site and specified areas within ½ mile from site

*The City of Red Wing should discuss fee structures  
that accompany all applications*

### **Definition of Nonmetallic Mining Activities**

Nonmetallic minerals means a product, commodity or material consisting principally of naturally occurring, organic, inorganic, nonmetallic, non-renewable material. Nonmetallic minerals include but are not limited to stone, rock, sand, gravel, asbestos, beryl, diamond, clay, coal, feldspar, peat and talc.

Nonmetallic mining means any or all of the following:

- (a) Extraction from the earth of mineral aggregates or nonmetallic minerals for off-site use or sale, including drilling and blasting as well as associated activities such as excavation, grading and dredging of such materials.
- (b) Manufacturing or processing operations that may involve the use of equipment for the crushing, screening, separation, or blending of the mineral aggregates or nonmetallic minerals obtained by extraction from the mining site or with materials transferred from off-site.
- (c) Manufacturing processes aimed at producing non-metallic products for sale or use by the operator.
- (d) Stockpiling of nonmetallic products for sale or use off-site and stockpiling of waste materials.
- (e) Transport of the extracted nonmetallic materials, finished products or waste materials to or from the extraction site.
  - (f) Disposal of waste materials.
  - (g) Reclamation of the extraction site.

Some exempted considerations to all nonmetallic mining operations

- (a) Excavations or grading by a person solely for domestic or farm use at a person's residence or farm.
- (b) Excavations or grading conducted for the construction, reconstruction, maintenance or repair of a highway, railroad, or any other transportation facility where the excavation or grading is entirely within the property boundaries of the highway, railroad or other transportation facility.
- (c) Grading conducted for preparing a construction site or restoring land following a flood or natural disaster.
- (d) Excavations for building construction purposes conducted on the building site.
- (e) Nonmetallic mining at nonmetallic mining sites where less than one acre of total affected acreage occurs over the life of the mine.
- (f) Removal from the earth of products or commodities that contain only minor or incidental amounts of nonmetallic minerals, such as commercial sod, agricultural crops, ornamental or garden plants, forest products, Christmas trees or plant nursery stock.

\*\*\*The above descriptions should be considered and weighed against already existing regulations & any already existing activity of a like nature in the Red Wing City Code\*\*\*

Minimum Standards of Operation

The City of Red Wing may grant a license to mine if the applicant can demonstrate that the following minimum standards of operation will be met.

- (1) General Standards.

- (a) The operator shall stake or otherwise mark the borders of the entire site and shall secure the site by fencing or other appropriate measures.
- (b) The operator shall demonstrate compliance with all of the other provisions of this Chapter.
- (c) The operator shall have obtained a blasting permit from the City for any blasting operations.
- (d) The operator shall demonstrate that all other applicable federal, state and local permits and approvals required for the nonmetallic mining operation have been or will be obtained prior to commencement of operation.
- (e) The operator shall provide notice to the City of any notices of violation, citations, or other enforcement actions taken by any other governmental body against the mining operation within the City.

**(2) Standards Regarding Off-Site Impacts.**

- (a) The operator shall undertake all measures necessary for the control of surface water runoff from nonmetallic mining operations in order to prevent pollution and erosion of sediment onto neighboring properties, surface water and groundwater, and shall also comply with the standards for erosion control under Minn Statutes as applicable.
- (b) In the event that the mine site contains areas adjacent to the nonmetallic mining operations that are being used for agricultural, commercial or residential purposes, the operator shall undertake all measures necessary to control surface water runoff from those areas from entering mining operations or otherwise causing contamination of surface water and groundwater.
- (c) The operator shall provide a buffer area of a minimum of 100 feet along bordering property lines and public roadways.
- (d) The operator shall screen the mining operations from public view to the maximum extent practicable through the use of berms, additional setbacks or other measures.
- (e) The operator shall limit normal hours of operations to 10 hours a day Monday through Friday during daylight hours and not later than 6:00 pm to minimize off-site impacts to residents. The operator may submit a plan for extended hours as a special exception, if it can demonstrate that additional hours are necessary for the mining operation and it would be consistent with public, health safety and welfare.
- (f) The operator shall ensure that trucks from the mining site shall not interfere with the safety of children being taken or returned from school, or the safety of residents and commuters at times when traffic volume from commuters going to and from work is highest.

(g) The operator shall limit night lighting on site, to that which is minimally necessary for security and, wherever possible, shall be shielded from illuminating off-site areas. Every effort consistent with legal requirements for aerial safety shall be made to minimize illumination of the night sky.

(h) The operator shall utilize all relevant dust control measures specified in Minn Stats.

(i) The operator shall control off-site noise levels to the maximum extent practicable.

(3) Standards Regarding Groundwater and Surface Water.

(a) Impacts to Groundwater Quality.

(i) Mining operations shall have at least one monitoring well for every 2-acre sector of the mine site, and the operator shall take quarterly samples for lead, arsenic and any other toxic metal that may reasonably be believed to be present in the area or in the type of deposit from which the extraction will be made.

(ii) Mining operations shall not cause an exceedance of groundwater quality standards in Minn Stat.

(b) Impacts to Groundwater Quantity.

(i) Mining operations shall not extract materials at a depth below the point that is 5 feet above the groundwater table.

(ii) Mining operations shall not cause a significant reduction in the quantity of groundwater available for reasonable use by current users within 1/2 mile of the mine site. A significant reduction is a drop in the water table that results in a substantial adverse impact on a private well including but not limited to the inability of a well to provide water on a continuous basis.

(c) Impacts to Surface Water Base Flow. Mining operations shall not cause a lowering of the groundwater table that results in adverse effects on surface waters within 1/2 mile of the mine site, including but not limited to, a reduction of water in streams and tributaries to or below base flows established prior to the beginning of mining operation.

(d) Impacts to Surface Water Use. Mining operations shall not cause a lowering of the groundwater table that results in adverse effects on surface waters which serve as a critical source of water for agricultural or municipal functions such as fire protection within 1/2 mile of the mine site. Adverse effects include but are not limited to a reduction of water in streams and tributaries to or below base flows established prior to the beginning of mining operation.

(4) Hazardous materials.

- (a) All hazardous chemicals shall be stored, used and disposed of in accordance with applicable state and federal law.
- (b) The operator shall not dispose of waste materials containing any hazardous chemicals in toxic amounts, or residuals declared to be hazardous by a government agency in toxic amounts.
- (c) The operator shall have a plan for responding to spills of any hazardous materials on the site.

(5) Special Exceptions.

- (a) The operator can request a special exception from the minimum standards of this Section if it can demonstrate that the intent of this Chapter can be achieved through by the use of alternative measures and that the public health, safety and welfare will not be adversely affected thereby.
- (b) City of Red Wing can impose requirements in addition to or exceeding the minimum standards if it has evidence that the public health safety and welfare will not be adequately protected without the imposition of additional measures.

## Annual Reporting

- (1) In the first two years of operations, the owner/operator of all non-metallic mining operations falling under the guidelines of the City of Red Wing's existing zoning codes shall submit a **bi-annual report** to the City of Red Wing's Environmental Officer and the City Planner between the dates of **January 1-February 1 & July 1-August 1**.
- (2) After two years of consecutive operations, the owner/operator of all non-metallic mining operations falling under guidelines of the City of Red Wing's existing zoning codes shall submit an **annual report** to the City of Red Wing's Environmental Officer and the City Planner between the dates of **January 1-February 1**.
  - (a) The bi-annual and annual report shall include the following information.
    - (1) An identification of the owner/operator and the location of the mine site.
    - (2) A map accurately showing the area of existing excavation, the unclaimed areas and reclaimed areas of the mine site. These maps shall include the acreage of each area.
    - (3) A written detailed description of activities and operations on the site for the previous half-year (for the bi-annual report) and year (for the annual report).
    - (4) A written detailed description of activities and operations planned for the following calendar year of operations.

- (5) A written report demonstrating how the owner/operator has been in compliance with all the terms set forth by the City of Red Wing. The reports shall include all groundwater, surface water, and air quality monitoring results.
- (6) A summary of all areas of non-compliance and a detailed plan for bringing non-compliant areas of operation into compliance for the next calendar year of operations.

### Inspection and Enforcement

- (1) Inspection.
  - (a) In addition to the bi-annual and annual reports, the City of Red Wing or other authorized representatives of the City of Red Wing may make inspections to determine the condition of non-metallic mining sites that fall under the jurisdiction of the City of Red Wing's zoning codes in order to ensure and safeguard the health and safety of the public and determine compliance with the minimum standards under the established provisions, upon reasonable notice.
- (2) Violations. The following are violations under the provisions of this Chapter.
  - (a) Engaging in non-metallic mining without-----
  - (b) Failure to comply with the minimum standards and other terms of this Chapter.

- (c) Making incorrect or false statements in the information and documentation submitted in the reporting or during inspection of the operation by the City of Red Wing or an authorized representative of the City of Red Wing.
- (d) Failure to provide documentation of the reporting provision of this chapter by the appropriate deadline.
- (e) Failure to take appropriate or reasonable action towards a known violation, citation, or request for additional financial assurance or any other order by the City of Red Wing.

### Financial Assurance

- (1) Financial assurance shall be provided to the City of Red Wing as a condition for approval of operations in the amount necessary for the following.
  - (a) Road Repair. An amount necessary for the repair and maintenance of City of Red Wing's roads used for truck traffic transporting materials to and from the mine site.
  - (b) Water Supply. An amount necessary to provide an alternative water supply to potentially affected residences or agricultural operations within ½ mile of the mine site or such other areas shown to be impacted by the operations of the mine site.
- (2) The form of financial assurance made to the City of Red Wing shall be agreed to by the City of Red Wing and may include performance bonds, irrevocable letters of credit or other measures agreed upon by the City of Red Wing.

- (3) In the event the City of Red Wing determines that the amount of financial assurance must be increased to meet specific road repair or water supply needs, or the amount available has been utilized, the City of Red Wing shall notify the owner/operator of the additional amount needed and the basis of that request. The owner/operator shall have 30 days to provide that increased amount.
- (4) The owner/operator shall also provide to the City of Red Wing a fully detailed reclamation plan and the financial assurance for the implementation of that reclamation plan to the fullest extent of Minnesota State Statutes and the provisions of the City of Red Wing contained within this Chapter. (((((must add detailed reclamation plan info into this chapter))))))

### Minimum Submission Requirements

- (1) In addition to submittal information under this Chapter, the application of a conditional use permit and/or land use permit shall include the following information:
  - (a) A written description of the proposed operation, including the types and quantities of the materials that would be extracted; proposed dates to begin extraction, end extraction, and complete reclamation; geologic composition and depth and thickness of the defined deposit being extracted; existing use of the land and proposed use after reclamation; existing natural and archaeological features on or adjacent to the site; where extracted

materials would be hauled and over what roads; types, quantities, and frequency of use of equipment to extract, process, and haul; whether and how frequently blasting, drilling, mining, crushing, screening, washing, refueling, fuel storage, asphalt batching, or concrete mixing would be performed on site; whether excavation will occur below the water table and, if so, how ground water quality will be protected; description and elevations of all temporary and permanent structures; proposed hours and days of operation; any special measures that will be used for spill prevention and control, dust control, or environmental protection; and assurances that the site will be developed, operated, and reclaimed in accordance with all approved plans and all county, state, and federal regulations, including a listing of all applicable regulations.

- (b) A site/operations plan map, drawn to scale by a qualified professional, and including site boundaries; existing contour lines; existing roads, driveways, and utilities; existing natural features including lake, streams, floodplains, wetlands, and shoreland areas; all residences and private and municipal wells within ½ mile of mine site; location of the proposed extraction, staging areas, fueling, fuel storage, and equipment storage areas; proposed location and surfacing of roads, driveways, and site access points; proposed phasing plan, if any; proposed fencing of property and gating of access points; proposed locations of stockpiles; proposed location and types of screening berms and

landscaping; and proposed temporary and permanent structures, including scales and offices.

- (c) An erosion control plan, drawn to scale by a professional engineer, meeting all applicable state and county and federal requirements.
- (d) A Reclamation Plan prepared in accordance with Minnesota State Statutes and the City of Red Wing non-metallic mining ordinance. ((((((make sure we add the REC PLAN to either the ordinance or have a separate non-metallic mining rec plan ordinance))))))

### Other Considerations for the non-metallic mining ordinance

- Require landscaped buffering where the use abuts a residential area or a residential zoned district
- Access to site only through points designated as access points/entrances on site/operations plan
- All public roads to be kept free of mud, dust, debris by sweeping or other means as necessary or as requested by City of Red Wing.
- All access points to be paved if headed onto roads that are already paved to prevent mud, dust, debris
- All buildings shall be at least 200 feet away from edge of property
- Buffering zones

- Limiting the time and scope of operations for non-metallic mining operations per operation.
- Spraying of site and driveways frequently to mitigate and control dust.
- Hours of operations
- All truck, excavation and processing equipment shall have exhaust systems that meet or exceed current standards to ensure noise is kept to reasonable levels. Mine ensures that noise not exceed 65 decibels at property line.
- Additional blasting standards
- Per tonnage fees to city
- Standards of berms and shielding site from public