

**INTERIM ORDINANCE TO ESTABLISH A STUDY PERIOD
AND MORATORIUM FOR A PERIOD OF UP TO ONE
YEAR PROHIBITING GROWTH OR EXPANSION OF CERTAIN MINING
ACTIVITIES WITHIN THE CITY OF WABASHA
PURSUANT TO MINN. STAT. § 462.355 SUBD. 4**

THE CITY OF WABASHA DOES ORDAIN:

Section 1: Purpose and Intent. The purpose and intent of this Ordinance is to prohibit:

1. The expansion of existing gravel mines beyond current property boundaries (without the issuance of an Interim Use Permit for those within zoning districts where they are allowed by ordinance);
2. New or expanded frac sand mining, washing, drying or processing operations; and
3. Any modifications or changes in operations of existing mining or extraction operations including all existing gravel pits within the City as follows:
 - a) Mining and hauling of materials other than those mined in the past and up to the date of adoption of this Ordinance.
 - b) Mining and hauling of materials at a rate or quantity beyond that occurring in the past and up to the date of adoption of this Ordinance.
 - c) Processing including washing, drying and sorting of any mined product or materials beyond that occurring in the past and up to the date of adoption of this Ordinance.

The City Council and the City Planning Commission have not yet had adequate opportunity to fully research, study and consider potential impacts new gravel or other mining and processing activities including those related to “frac” or silica sand within the zoning district where they are allowed, and the City is in the process of studying these issues by the City Planning and Zoning Department and the City Planning Commission and is in need of the results of those studies before any newly enacted regulations can be adopted.

Section 2: Preliminary Findings. The City Council hereby makes the following preliminary findings to serve as the basis for the necessary study to be made during the moratorium period provided in this Ordinance. These preliminary findings serve as the reasons why it is in the public interest for the City to conduct a study and so declare a moratorium by virtue of this Ordinance:

1. The City of Wabasha’s Zoning Ordinance (Section 305 of City Code) provides the following mining related land use definitions:
 - a. *Extractive use* is “the use of land for surface or subsurface removal of sand, gravel, rock, industrial minerals, other nonmetallic minerals, and peat not regulated under Minnesota Statutes Sections 93.44 to 93.51 through an excavation process”;
 - b. *Mining site/operation* is “a tract of land and the operations necessary to process extracted mineral resources which may include the extractive

process, but also allows processing, stockpiling, and the retail, wholesale, contract purchase, or transfer of mineral products. For purposes of this title, the leveling, grading, filling, or removal of materials during the course of normal site preparation for an approved (e.g., residential subdivision, commercial development, etc.) does not constitute a mining site/operation if: processing of the material does not occur on the property; the activity is completed quickly, does not occur over an extended period of time, and onsite stockpiles are fully depleted; and a mining permit is not required from the Department of Natural Resources.”

2. These uses are allowed in highway commercial and industrial zoning districts with an Interim Use permit;
3. Several gravel pits are known to exist with the City and are located in areas where the current zoning ordinance either allows no such activity or requires an Interim Use Permit;
4. It is believed that these operations have been in existence since prior to these zoning requirements and none of the operations have permits and are therefore considered lawful non-conforming uses;
5. Lawful non-conforming uses may not expand or intensify unless allowed to do so under Section 305 of City Code or by other law (such as with the issuance of a special permit, if required) and only that portion of the land or structure in actual use may be so continued (per 305.08 Subd. 2B);
6. By the very nature of mining or excavating, there is a need to expand beyond that portion of the land already in actual use;
7. The City is aware of the growing frac sand industry in this region and has been vigilant in watching for potential impacts of such operations on the community but has not fully researched, analyzed and studied the impacts of the mining and processing of silica sand on or determined the adequacy and effectiveness of current regulations in protecting the public health, safety and welfare of the community; and
8. State Statute 462.355 allows a municipality to adopt an interim ordinance for the purpose of considering adoption or amendment of official controls including ordinances establishing zoning, subdivision controls, site plan regulations, sanitary codes, building codes and official maps.

Section 3: Moratorium Declaration. For the duration stated herein and until the City has completed studies and adopted any ordinance or amendments to the City's Zoning Ordinance or Comprehensive Plan, the City shall not accept, issue or process any applications, permits or otherwise allow:

1. The expansion of existing gravel mines beyond current property boundaries (without the issuance of an Interim Use Permit for those within zoning districts where they are allowed by ordinance);
2. New or expanded frac sand mining, washing, drying or processing operations; and

3. Any modifications or changes in operations of existing mining or extraction operations including all existing gravel pits within the City as follows:
- a) Mining and hauling of materials other than those mined in the past and up to the date of adoption of this Ordinance.
 - b) Mining and hauling of materials at a rate or quantity beyond that occurring in the past and up to the date of adoption of this Ordinance.
 - c) Processing including washing, drying and sorting of any mined product or materials beyond that occurring in the past and up to the date of adoption of this Ordinance.

Section 4: Period of Moratorium. During the period of this moratorium, the City shall conduct a study to help determine the regulatory controls which may need to be adopted or revised to protect the public's health, safety and welfare related to the aforementioned purpose, intent and findings. In addition, the City shall study the Comprehensive Plan to determine whether an amendment to the Comprehensive Plan is necessary or appropriate, all after completion of any traffic impact or environmental studies ordered by the City Council and/or Planning Commission.

Section 5: Duration. Unless otherwise provided in this section, this Ordinance shall expire, without further City Council action, one year from the effective date of this Ordinance following final passage by the City Council, or may be repealed earlier if the Council determines that the requisite studies have been completed and adopted and that appropriate evaluation and action, including any necessary revisions of the City Code or Comprehensive Plan, have been finalized and adopted by the City Council.

Section 6: Effective Date. This Ordinance shall take effect immediately upon its adoption.

Dated this 5th day of March, 2013.



Robert Hall