

- (2) Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or resists the enforcement of any of the provisions of this Section shall, upon conviction thereof, forfeit to the Village of Elk Mound, a penalty as prescribed in Section 1-1-6. Each and every day of violation shall constitute a separate offense in addition to any penalties. Compliance with this Section is mandatory, and no building, structure or use shall be allowed without full compliance.
- (3) In the event any individual, person, partnership, corporation, or other legal entity (hereinafter "individual") that owns an Existing Facility Which May Cause or Threaten to Cause Environmental Pollution, or any individual and/or facility possession a Conditional Use Permit under the provisions of Subsection (j), Conditional Uses, and that individual/facility causes, or is the site of, the release of any contaminants which endanger the municipal water supply associated with a Wellhead Protection Overlay District, the activity causing said release shall immediately cease and a cleanup satisfactory to the Village shall occur.
- (4) The individual/facility shall be responsible for all costs of cleanup, Village consultant or outside contractor fees, fees at the invoice amount plus administrative costs for oversight, review and documentation, plus the following:
 - a. The cost of Village employees' time associated in any way with the cleanup based on the hourly rate paid to the employee multiplied by a factor determined by the Village representing the Village's cost for expenses, benefits, insurance, sick leave, holidays, workman's compensation, holidays, overtime, vacation, and similar benefits.
 - b. The cost of Village equipment employed in the cleanup.
 - c. The cost of mileage incurred on Village vehicles used in any activity related to the cleanup, or of mileage fees reimbursed to Village employees attributed to the cleanup.

Sec. 13-1-57 AEO Adult Entertainment Overlay District.

(a) **Authority.**

- (1) The Village Board has authority, to be liberally construed in favor of the Village, under its general police powers set forth in Ch. 61, Wis. Stats., to act for the good order of the municipality and for the health, morals, safety and welfare of the public; and may carry out its powers by regulation and suppression; and
- (2) The Village Board recognizes it lacks authority to regulate obscenity under Sec. 66.0107(3), Wis. Stats., and does not intend by adopting this Section to regulate obscenity, since nudity in and of itself is not obscene, it declares its intent to enact an ordinance addressing the secondary effects of live, totally nude, non-obscene, erotic dancing in bars and taverns; and

- (3) Adult establishments in other communities tended to further the increase of criminal and other offensive activity, to disrupt the peace and order of the communities, to depreciate the value of real property, to harm the economic welfare of the communities and to negatively affect the quality of life of the communities; and such secondary effects are detrimental to the public health, safety and general welfare of citizens; and
 - (4) The Village Board recognizes the U.S. Supreme Court has held that material with adult content is within the outer perimeters of the First Amendment to the United States Constitution and therefore entitled to some limited protection under the First Amendment, and the governing body further recognizes that freedom of speech is among our most precious and highly protected rights, and wishes to act consistently with full protection of those rights; and
 - (5) However, the Village Board is aware, based on the experiences of other communities, that adult establishments may and do generate secondary effects which the governing body believes are detrimental to the public health, safety and welfare of the citizens of the Village of Elk Mound; and
 - (6) Among these secondary effects are:
 - a. The potential increase in prostitution and other sex-related offenses, as well as other crimes and offenses;
 - b. The potential depreciation of property values in neighborhoods where adult establishments featuring nude dancing exist;
 - c. Health risks associated with the spread of sexually transmitted diseases; and
 - d. The potential for infiltration by organized crime for the purpose of unlawful conduct; and
 - (7) The Village Board desires to minimize, prevent and control these adverse effects and thereby protect the health, safety and general welfare of the citizens of the Village of Elk Mound; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods; and deter the spread of urban blight; and
 - (8) The Village Board has determined that the enactment of a zoning ordinance provision allowing adult establishments viable areas in which to exist within the Village while keeping those adult establishments separated from each other, residential areas, schools, churches, day care centers, or bars or taverns, promotes the goal of minimizing, preventing and controlling the negative secondary effects associated with such adult establishments.
- (b) **Purpose.** The purpose of the AEO Adult Entertainment Overlay District is to create an overlay zoning district whereby adult establishments are sufficiently separated from each other and conflicting uses so as to ameliorate the negative secondary effects of adult uses while providing adult establishments sufficient area and opportunity to operate within the Village so as not to suppress their existence.

- (c) **Definitions.** For purposes of this District, the following definitions shall be applicable:
- (1) **Adult Establishment.** Shall include, adult book stores, adult motion picture theaters, adult novelty stores, and further means any premises to which public patrons or members are invited or admitted that is substantially devoted to the purveyance, demonstration or display of specified sexual activities or specified anatomical areas.
 - (2) **Adult Bookstore.** An establishment which as its substantial course of conduct, presents adult entertainment for observation by patrons therein, or which, as part of its substantial course of conduct, offers for sale, rent, trade, lease, inspection or viewing books, films, videocassettes, magazines or other such media, which are distinguished or characterized by their emphasis on matters depicting, describing or relating to specified anatomical areas or specified sexual activities.
 - (3) **Adult Entertainment.** Any exhibition of any motion picture, live performance, display or dance of any type which has as a significant or substantial portion of such performance, or is distinguished or characterized by an emphasis on, any actual or simulated performance of specified sexual activities or exhibition and viewing of specified anatomical areas.
 - (4) **Adult Motion Picture Theater.** Any establishment for the presentation of motion pictures that as its dominant theme, or distinguished or characterized by an emphasis on, matters depicting, describing or relating to specified sexual activities, or specified anatomical areas for observations by patrons therein.
 - (5) **Adult Novelty Store.** Any establishment which as its substantial course of conduct offers for sale, rent, trade, lease, inspection or viewing any adult novelty items, sex toys, sexual gratification appliances, or other similar products, excluding contraceptives or similar products of medical value, that are distinguished or characterized by their emphasis on matters depicting, describing or relating to specified anatomical areas or specified sexual activities.
 - (6) **Specified Anatomical Areas.** Means either:
 - a. Less than completely and opaquely covered human genitals pubic region.
 - b. Human male genitals in a discernible turgid state, even if opaquely covered.
 - c. Less than completely and opaquely covered nipples or areolas of the human female breast.
 - (7) **Specified Sexual Activities.** Means simulated or actual:
 - a. Showing of human genitals in a state of sexual stimulation or arousal; or
 - b. Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sadomasochistic abuse, fellatio or cunnilingus; or
 - c. Fondling or erotic touching of human genitals, pubic region, buttocks or female breasts.
 - (8) **Substantial.** Forty percent (40%) or more of business stock in trade, display space, floor space or retail sales in any one month. Upon reasonable belief that an entity is in excess of the forty percent (40%) threshold, that entity shall provide all necessary

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records, receipts and documentation to the Village upon request. Failure to do so shall result in a presumption that the entity is operating in excess of the threshold.

(d) **Location.**

- (1) No adult establishment shall be located:
 - a. Within any zoning district other than general commercial, limited commercial, highway commercial, industrial, and heavy industrial.
 - b. Within two hundred fifty (250) feet (plus) feet of an existing adult establishment.
 - c. Within two hundred fifty (250) feet of any dwelling as defined by this Zoning Code.
 - d. Within two hundred fifty (250) feet of any pre-existing school, church or daycare, as defined in this Zoning Code.
 - e. Within two hundred fifty (250) feet of any pre-existing establishment licensed to sell or dispense fermented malt beverages or intoxicating liquor.
- (2) For purposes of this District, distances are to be measured in a straight line, without regard to intervening structures or objects, from the property line of the adult establishment, to the nearest property line of another establishment, dwelling, school, church, daycare or establishment selling or dispensing fermented malt beverages or intoxicating liquor.

(e) **Hours of Operation.**

- (1) No adult establishment shall be open between the hours of 2:00 a.m. and 8:00 a.m., Monday through Friday, between the hours of 2:30 a.m. and 8:00 a.m. on Saturdays, or between the hours of 2:30 a.m. and 12:00 noon on Sundays.
- (2) All adult establishments shall be open to inspection at all reasonable times by the Police Department, Zoning Administrator and/or other Village representatives.

Sec. 13-1-58 E-1 Mineral Extraction or Landfill Overlay District.

- (a) **Purpose.** The intent of this District is to provide a means of properly siting, regulating and reclaiming mineral extraction and landfill sites.
- (b) **Permitted Uses.**
 - (1) Mineral extraction operations and landfill sites that are presently in existence, provided that applicable provisions of this Section are complied with.
 - (2) Class 2 collocation of a new mobile service facility on an existing support structure without substantial modification, per Section 13-1-134.
- (c) **Conditional Uses.** Conditional uses in the District shall include all conditional uses listed in the underlying district. Conditional use procedures, as described in Article D, shall be adhered to as well as the requirements of this Section, with the more restrictive provision being applicable. In addition, the following are permitted conditional uses:
 - (1) Extension of legally existing mineral extraction operation or the creation of a new such extraction operation.

- (2) New mineral extraction operations and the following: Landfills; solid waste management facilities, recycling centers; bio-remediation sites; and soil extraction or scraping for purposes of obtaining fill material for such large scale operations as landfill sealing, roadbed construction, etc; or similar uses. These uses shall be a conditional use in all zoning districts except in the R-1, R-2, R-3, R-4, R-5, and R-6 Districts.
- (d) **Basic District Standards.**
- (1) **Basic Standards.** The basic standards in this District shall be controlled by those of the underlying district unless more restrictive standards are established in the conditional use approval. Also, excavations or fill areas within two hundred (200) feet from any right-of-way or property line shall not be permitted unless the Village Board determines that the operational plans adequately provide for:
- Safety of abutting land uses and for safe ingress to, egress from and traffic flow past the site.
 - Aesthetic screening from abutting properties.
 - Dust control from the operation and/or any stockpiling.
 - Staging of the operation to produce a minimal time frame between commencing of operations and restoration within this two hundred (200) foot area.
- (2) **Permit Validity; Operational Requirements.** The conditional use permit shall be in effect for a period not to exceed one (1) year and may be renewed upon application for a period not to exceed one (1) year; a shorter period may be established by Village Board action. There shall be an annual fee as prescribed by Section 1-3-1 for such permit. Modifications or additional conditions may be imposed upon application for renewal. Operational requirements shall include the following where applicable, and all require Village Board approval:
- Fencing or other suitable barriers shall be erected as necessary to protect the public.
 - Machinery, roads and equipment used in the extractive operation shall be constructed, maintained and operated in such a manner as to minimize dust.
 - Crushing, washing, refining or other processing other than the initial removal of material, may be permitted as an accessory use only as specifically authorized under the terms of the grant of permit.
 - Planting of trees and shrubs and other appropriate landscaping shall be provided where deemed necessary by the Village and other applicable agencies.
 - Hours of operation may be established and enforced by the Village Board.
 - Other requirements deemed necessary by the Village Board.
- (3) **Plan of Reclamation.** A reclamation plan meeting the standards of NR 135, Wis. Adm. Code, shall be submitted and approved by all applicable agencies and the Village Board.
- (e) **Existing Operations.** Existing operations shall be subject to the following further requirements:

- (1) **Permit.** Within sixty (60) days after the original adoption of this Section all existing extractive operations shall be required to register with the Zoning Administrator, submitting pertinent data relative to the present operation, including the boundaries of the actual operation and of the ownership. A permit shall be granted to such existing operation, subject to compliance with the operational requirements, listed above where they can be reasonably applied under existing circumstances.
 - (2) **Plan for Restoration.** There shall be required within one (1) year after original adoption of this Section, the submission of a plan for restoration of the site of existing extractive operation as provided above. The plan for restoration in such case shall not, however, impose requirements which are economically or engineeringly unreasonable with respect to conditions resulting from operations prior to enactment of this Section.
- (f) **Renewal Permit.** Within one year after the original enactment date of this Section, any such existing operation shall be required to make application for a renewal permit the same as for reapplication in the case of a new operation under this Section.
- (g) **Plan of Operation.** All mineral extraction operations including those operations and activities which lawfully existed prior to the original adoption of this Section shall prepare a plan of operation for the site which shall include the following information:
- (1) Statement of ownership of the parcel and control of the operations.
 - (2) A site plan, drawn to scale, showing the lateral extent of existing and proposed excavations; the location and width of all easements and right of way on or abutting the site; existing water bodies, water courses and drainageways and proposed modifications; estimated direction of flow or groundwater; the location of existing and proposed buildings, structures, machinery and equipment; and the location of all existing and proposed storage and stockpiling areas.
 - (3) Cross sections of the site, drawn to scale, showing the vertical extent of existing and proposed excavations.
 - (4) A reclamation plan and such other information as may be necessary to determine the nature of the operation and the effect on the surrounding area;
 - (5) Methods of screening from adjacent properties and proximity to adjacent properties.
 - (6) Hours of operation and, if applicable, a phasing plan for future operations.
 - (7) Dust and noise control.
 - (8) Maximum depth.
 - (9) Blasting procedures.
 - (10) Location and height of stockpiles.
 - (11) Such other information the Village Board deems pertinent to the operation.
- (h) **Gravel Crushing; Permit Requirement.** In addition to all other conditional use permit and other requirements prescribed in this Section, an annual permit is required for the placement or operation at any mineral extraction site of any portable or fixed gravel crushing equipment. Such gravel crushing operation permit shall be valid for one (1) year;

the Village Board may attach reasonable conditions to such permit. The annual fee for the permit shall be as prescribed in Section 1-3-1.

(i) **Definitions.** As used in this Section:

- (1) **Environmental Pollution.** Has the meaning specified under Sec. 144.01(3), Wis. Stats.
- (2) **Nonmetallic Mining or Mineral Extraction Operation.** Operations or activities for the extraction from the earth for sale or use by the operator of mineral aggregates such as stone, sand and gravel, fill material and nonmetallic minerals such as asbestos, beryl, clay, feldspar, peat and talc, related operations or activities such as excavation, grading or dredging if the purpose of those operations or activities is the extraction of mineral aggregates and nonmetallic minerals and related processes such as crushing, screening, scalping, dewatering and blending.
- (3) **Nonmetallic Mining or Mineral Extraction Refuse.** Waste soil, rock, mineral, liquid, vegetation and other waste material resulting from a nonmetallic mining or mineral extraction operation. This term does not include merchantable by-products resulting directly from or displaced by the nonmetallic mining or mineral extraction operation.
- (4) **Nonmetallic Mining or Mineral Extraction Site.** The location where a nonmetallic mining or mineral extraction operation is proposed or conducted, including all surface areas from which materials are removed, related storage and processing areas, areas where nonmetallic mining refuse is deposited and areas disturbed by the mineral extraction operation by activities such as the construction or improvement of roads or haulageways.
- (5) **Operator.** Any person who is engaged in a mineral extraction operation or mineral extraction site reclamation or who applies for or holds a nonmetallic mining permit issued under this mineral extraction reclamation ordinance whether individually, jointly or through subsidiaries, agents, employees, contractors or subcontractors.
- (6) **Reclamation.** The rehabilitation of a mineral extraction site including, but not limited to, removal of nonmetallic mining refuse, grading of the site, replacement of topsoil, stabilization of soil conditions, establishment of vegetative cover, control of surface water and groundwater, prevention of environmental pollution, construction of fences and, if practical, restoration of plant, fish and wildlife habitat.
- (7) **Replacement of Topsoil.** The replacement of the topsoil which was removed or disturbed by a mineral extraction operation or the provision of soil which is at least as adequate as the topsoil which was removed or disturbed for the purposes of providing adequate vegetative cover and stabilization of soil conditions.

(j) **Exempt Activities.** The reclamation of sites within this District shall not apply to the following activities:

- (1) Excavations or grading by a person solely for domestic use at his or her residence.
- (2) Excavations or grading conducted for highway construction purposes within the highway right-of-way.

- (3) Grading conducted for farming, preparing a construction site or restoring land following a flood or natural disaster.
 - (4) Excavations for building construction purposes.
 - (5) Any mining operation, the reclamation of which is required in a permit obtained under Sections 144.80 to 144.94, Wis. Stats.
 - (6) Any activities conducted at a solid or hazardous waste disposal site required to prepare, operate or close a solid waste disposal facility under Sections 144.435 to 144.445, Wis. Stats., or a hazardous waste disposal facility under Sections 144.60 to 144.74, Wis. Stats., but a nonmetallic mining reclamation ordinance may apply to activities related to solid or hazardous waste disposal which are conducted at a nonmetallic site separate from the solid or hazardous waste disposal facility such as activities to obtain nonmetallic minerals to be used for lining, capping, covering or constructing berms, dikes or roads.
- (k) **Financial Assurance.** Before rezoning and a reclamation plan is approved by the Village Board, the operator shall submit an agreement and performance bond or cash escrow agreement to assure the following:
- (1) The operator shall pay for the cost of all improvements required in the reclamation plan by the Village Board.
 - (2) Guaranteed completion of the required reclamation within a period determined by the Village Board.
 - (3) Payment by the operator for all costs incurred by the Village for review and inspection. This would include preparation and review of plans and specifications by the Village Engineer and Attorney, as well as other costs of a similar nature.
 - (4) The Village may elect to have stages of the reclamation plan performed under the terms of a cash escrow agreement.
 - (5) The required performance bond or cash escrow agreement shall be equal to one and one-quarter (1-1/4) times the Village Engineer's estimated cost of the required improvements.
 - (6) If the required reclamation is not complete within the designated period, all amounts held under the escrow agreement or performance bond shall be turned over and delivered to the Village and applied to the cost of the required reclamation. Any balance remaining after such reclamation has been done shall be returned to the operator. The Village Board, at its option, may extend the bond period for additional periods.
- (l) **Fences.** Prior to reclamation, mining sites abutting areas zoned residential shall be enclosed by a security fence of not less than four (4) feet in height. Fence gates shall be locked or secured when the site is unattended so as to prevent uncontrolled access by children to the site.
- (m) **Inspection.** An authorized agent of the Village may enter the premises of a nonmetallic mining operation in the performance of his or her official duties by permission of the

property owner or operator or pursuant to a special inspection warrant issued under Sec. 66.0119, Wis. Stats., in order to inspect those premises and to ascertain compliance with this nonmetallic mining reclamation Section.

- (n) **Prohibitions and Orders.** Mineral extraction mining operations within the Village are prohibited if the nonmetallic mining site cannot be reclaimed in compliance with the standards of this Section or if other requirements of this Section are not met.

State Law Reference: NR 135, Wis. Adm. Code.

Sec. 13-1-59 Reserved for Future Use.