

CHAPTER 152: SAND MINING

Section

General Provisions

- 152.01 Title; purpose
- 152.02 Definitions

Permits

- 152.15 Permits required; effect of provisions on existing operations
- 152.16 Application requirements; fees
- 152.17 Application review and approval; issuance of permit
- 152.18 Standards for review of permit applications
- 152.19 Performance guarantee
- 152.20 Term of permit
- 152.21 Transferability
- 152.22 Permit renewal

Regulations

- 152.35 Applicability of subchapter
- 152.36 Operations standards
- 152.37 Restoration requirements
- 152.38 Reuse requirements

Administration and Enforcement

- 152.50 Right of entry
- 152.51 Noncompliance; permit revocation; appeals
- 152.99 Penalty

Statutory reference:

Sand dune mining, state regulations, see M.C.L.A. §§ 324.63701 et seq.

GENERAL PROVISIONS

§ 152.01 TITLE; PURPOSE.

This chapter shall be known as and may be cited as the “Sand Mining Ordinance.” Because sand mining sites and operations can be detrimental to persons and property due to dirt, dust and noise emitted as a result of sand mining operations, and because sand mining operations can create steep hillsides, shifting earth, standing water and other potentially hazardous conditions, and because sand mining operations can result in permanent changes to the topographical and geological characteristics of the site being mined, the city has determined to establish operational, maintenance, performance, reclamation and reuse standards and

regulations for sand mining sites and sand mining operations and to require that all operators of sand mining sites obtain a permit for such sand mining operations, in order to protect the public health, safety and welfare of the citizens of the city.

(Ord. 140, passed 12-19-94)

§ 152.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BARRIER DUNE. The first landward sand dune formation along the shoreline of a Great Lake or a sand dune formation designated by the Michigan Department of Natural Resources.

BUILDING INSPECTOR. The City Building Inspector.

CELL. A subunit of a sand mining site as determined in size and location by a permittee, but which subunit shall not exceed 10 acres in size except in those instances authorized by the Michigan Department of Natural Resources.

COMMERCIAL USE. Includes **INDUSTRIAL USE** and means any use where the sand is mined for resale at a profit to the permittee, and does not include excavation of sand in conjunction with installation or maintenance of public or private utilities, streets, or other public utilities in accordance with a permit issued by the city, and does not include excavation of sand which is of limited scope and duration and which is undertaken primarily for the immediate use and development of land in accordance with a building permit issued by the city.

CRITICAL DUNES. A geographic area designated by the Michigan Department of Natural Resources in its atlas of critical dunes areas, as amended from time to time.

dB(A) The sound pressure level in decibels measured on the “A” scale of a standard sound level meter having characteristics defined by the American National Standard Institute.

DECIBEL. A unit used to express the magnitude of sound pressure and sound intensity, where the sound pressure level of a given sound is defined to be 20 times the common logarithm of the ratio of the sound pressure to a reference pressure of $2 \times 10^{-5} \text{N/m}^2$ (Newtons per meter squared).

IMPORTING SAND. Bringing to a sand mining site which is regulated by this chapter any sand which originates from another location.

PERMIT. A sand mining permit issued in accordance with this chapter.

PERMITTEE. Any person, or persons, or firm who has received a permit in accordance with this chapter.

PLANNING COMMISSION. The City Planning Commission.

RESTORATION. Reestablishing surface contours and slopes and reestablishing protective vegetative ground cover for the purpose of stabilizing the ground surface and prevention of erosion of the ground surface.

REUSE. Another use of a sand mining site which would occur after completion of restoration of a sand mining site, and which would be in compliance with the city's future land use plan.

SAND. A granular soil material having a grain size range of .0625 mm to 2.0000 mm.

SAND LOADING. Moving mined sand, processed or unprocessed, onto a truck, railroad car, boat or barge, or any other means for eventual transportation of sand off of the sand mining site.

SAND LOADING EQUIPMENT. Any equipment, structures, or improvements, above ground or below ground, or in, over, or under water, used to load unprocessed or processed sand onto a truck, railroad car, boat or barge, or any other means of transporting sand off of the sand mining site.

SAND MINING. The removal of sand by excavation, stripping, pumping, or other method from any naturally occurring land formation for commercial use.

SAND MINING EQUIPMENT. Any equipment, structures, or improvements above ground or below ground used to remove sand from any naturally occurring land formation.

SAND MINING SITE. Any lot or lots of record in the city on any portion of which sand is mined, moved, processed, or loaded for commercial use.

SAND MOVING. Changing the location of mined sand within a sand mining site for purposes of processing mined sand for eventual loading and transportation.

SAND MOVING EQUIPMENT. Any equipment, structures, or improvements, above ground or below ground, used to move mined sand from a mining site to sand processing equipment, including conveyors, pipelines, trucks, railroad cars, or any other means of moving mined but unprocessed sand within a mining site.

SAND PROCESSING. Washing, grading, separating, mixing, sorting, grinding and any similar activity performed upon mined sand for eventual loading and transportation.

SAND PROCESSING EQUIPMENT. Any equipment, structures or improvements, above ground or below ground, used for washing, grading, separating, mixing, sorting, or grinding mined sand preparatory to transporting the processed sand off of the mining site.

SAND TRANSPORTATION. Moving mined sand, processed or unprocessed, to or from a

sand mining site.

SAND TRANSPORTATION EQUIPMENT. Any equipment, vehicles, rolling stock, vessels, structures, or improvements, above ground or below ground, or in, on, under, or over water, used to remove or to import mined sand from a sand mining site.

STAGNANT WATER. Any standing, unflowing surface water which has become foul from lack of movement.

SUBSURFACE SAND MINING. Any sand mining conducted below the prevailing ground water level of the sand mining site.

SURFACE LAND MINING. An sand mining conducted above the prevailing ground water level of the sand mining site.

TERMINATION OF SAND MINING. Any of the following:

(1) the actual cessation of substantial sand mining activities for a continuous period of 12 months;

(2) the actual cessation of substantial sand mining activities with the intention of abandoning such activities; or

(3) the actual cessation of substantial sand mining activities for a period of six months with the revocation of the Michigan Department of Natural Resources sand mining permit for the sand mining activities.

UTILITIES. Potable water mains and appurtenances, sanitary sewer mains and appurtenances, and storm water drains and sewers and appurtenances.
(Ord. 140, passed 12-19-94)

PERMITS

§ 152.15 PERMITS REQUIRED; EFFECT OF PROVISIONS ON EXISTING OPERATIONS.

(A) After the effective date of this chapter, no person, firm or corporation shall conduct any sand mining, moving, processing, loading or transportation operations on a sand mining site within the city except in accordance with a permit issued pursuant to this chapter.

(B) For all operations on a sand mining site existing as of the effective date of this chapter which have been issued a permit in accordance with Ordinance 96, passed 1-8-86, as amended by Ord. 131, passed 5-3-93, such permitted sand mining operations may continue until the expiration date of the issued permit. No person, firm or corporation continuing sand mining operations under a previously issued permit shall continue sand mining operations after the expiration date of the issued permit except in accordance with a permit issued pursuant to this

chapter.

(Ord. 140, passed 12-19-94) Penalty, see § 152.99

§ 152.16 APPLICATION REQUIREMENTS; FEES.

Any person or firm desiring to conduct sand mining, moving, processing, loading, or transporting operations on any lot or lots of record within the city shall submit the following items to the Building Inspector not less than 90 days prior to the proposed date of commencement of operations:

(A) *Sand mining permit application form.* The applicant shall submit a completed sand mining permit application form provided by the Building Inspector, including:

- (1) The name, address, and telephone number of the applicant/operator;
- (2) The name, address, and telephone number of the applicant's contact person;
- (3) The name, address, and telephone number of the owner if different than the applicant;
- (4) A legal description of the lot or lots for which a sand mining permit is sought;
- (5) The tax parcel code numbers for (4) above;
- (6) The signature of the applicant certifying that the information submitted on and with the permit application is true and correct to the best of his or her knowledge;
- (7) The signature of the applicant certifying that the applicant has complied with any limitation upon the importing of sand that is set forth in this chapter, and will comply with any limitation upon the importing of sand that is set forth in this chapter;
- (8) If the owner is different than the applicant, the signature of the owner certifying that the applicant is authorized to submit the permit application.

(B) *Sand mining operations plan narrative.* The applicant shall submit a sand mining operations plan narrative, including:

- (1) A description of the type of sand to be mined;
- (2) A description of the method of mining sand from the site;
- (3) A description of the method of moving sand mined from the site for processing;
- (4) A description of the method of processing sand mined from the site;

(5) A description of the method of loading sand mined from the site for transporting;

(6) A description of the method of transporting sand mined from the site to its destinations;

(7) A description of any other equipment, structures, or land improvements at the mining site;

(8) The estimated quantities of sand to be mined from the site, from the current year to completion of mining:

<u>Year</u>	<u>Cell No./Surface</u>	<u>Cell No./Subsurf.</u>	<u>Cell Total</u>
<u> </u>	<u> </u>	<u> </u>	
Total	Surface Sand	Subsurface Sand	Total Sand

(9) The proposed sequence in which cells will be mined, from the current year to completion of mining:

<u>Year</u>	<u>Cells to be Mined</u>
-------------	--------------------------

(10) The estimated dates for completion of the restoration of cells:

<u>Year</u>	<u>Cells Restored</u>
-------------	-----------------------

(11) The estimated dates for the reuse of restored cells:

<u>Year</u>	<u>Cells Reused</u>
-------------	---------------------

(12) The measures to be taken to control noise;

(13) The measures to be taken to control wind-blown sand;

(14) The measures to be taken to control access to the site;

(15) The measures to be taken to control glare;

(16) The measures to be taken to prevent trespassing;

(17) The measures to be taken to prevent waste accumulation;

(18) The measures to be taken to prevent erosion;

(19) The measures to be taken to prevent stagnant water;

(20) The measures to be taken to preserve existing vegetation;

(21) The measures to be taken to protect barrier dunes and critical dunes;

(22) A description of the hours of operations: mining, moving, processing, loading, and transporting;

(23) If mined sand will be shipped off-site by truck, a description of the type of trucks used, the weight of loaded trucks, the number of trucks leaving the site per day, and the route through the city to be used by trucks leaving the site;

(24) A description of any other significant aspect of proposed sand mining operations;

(25) A description of the impact of the proposed sand mining operations upon existing sand mining operations in the city.

(C) *Hydrogeological report.* The applicant shall submit a current hydrogeological report prepared by a qualified engineer, explaining the impact of the proposed sand mining operations upon the groundwater under the sand mining site and under adjacent property within ½ mile of the sand mining site.

(D) *Sand mining site plan.* The applicant shall submit a sand mining site plan (drawing) including the lot or lots on any portion of which sand mining, sand moving, sand processing, sand loading, and sand transportation is to occur, and including adjacent property within 200 feet of the lot boundaries, which has been prepared by a registered engineer or land surveyor, is dated, sealed, and signed, and is on a scale of 1 inch = 100 feet, and which includes the following:

- (1) A North point, scale, date, and revision block;
- (2) Adjacent public streets which provide access to the site;
- (3) The location of all existing structures and land improvements;
- (4) Delineation of the 100-year flood plain boundaries;
- (5) Existing elevations at 5-foot contours;
- (6) Existing driveways and on-site service roads;
- (7) Bench mark references;
- (8) The location of any recorded easements or rights-of-way;
- (9) The location of any fences, gates, signs, and parking areas;

- (10) The location of any fixed sand mining equipment or structures;
- (11) The location of any fixed sand moving equipment or structures;
- (12) The location of any fixed sand processing equipment or structures;
- (13) The location of any fixed sand loading equipment or structures;
- (14) The location of any fixed sand transportation equipment or structures;
- (15) The boundaries of the lot or lots for which a permit is sought;
- (16) The boundaries of adjacent properties within 200 feet of the lot boundaries;
- (17) The boundaries of the area proposed to be mined, with mining cells numbered and cell boundaries indicated and cell acreage indicated; and completed, interim, active and future cells;
- (18) Setback lines as required by this chapter;
- (19) The location of any exterior lighting fixtures;
- (20) The location of any barrier dunes or critical dunes areas as designated by the state;
- (21) The boundaries of any man-made lakes, and an indication of the existing acreage of surface area.

(E) *Sand mining site restoration plan.* The applicant shall submit a restoration plan (drawing) including the lot or lots on any portion of which sand mining, sand moving, sand processing, sand loading, and sand transportation has been conducted, is being conducted, or will be conducted, and including adjacent property within 200 feet of the lot boundaries, which has been prepared by a registered engineer or land surveyor, is dated, sealed and signed, and is on a scale of 1 inch = 100 feet, and which includes the following:

- (1) A North point, scale, date, and revision block;
- (2) Adjacent public streets which provide access to the site;
- (3) The locations of post-mining structures and land improvements, if any;
- (4) Delineation of the 100-year flood plain boundaries;
- (5) Post-mining elevations at 5-foot contours;

- (6) Post-mining driveways and on-site service roads;
 - (7) Bench mark references;
 - (8) The location of any recorded easements or rights-of-way;
 - (9) The location of any post-mining fences, gates, signs, and parking areas;
 - (10) The boundaries of the lot or lots for which a permit is sought;
 - (11) The boundaries of adjacent properties within 200 feet of the lot boundaries;
 - (12) The boundaries of the land area that has been restored, and an indication of the acreage;
 - (13) The boundaries of the land area in the process of being restored, and an indication of the acreage;
 - (14) The boundaries of the land area being mined, and an indication of the acreage;
 - (15) The boundaries of the land area to be mined, and an indication of the acreage;
 - (16) Setback lines as required by this chapter;
 - (17) The location of any barrier dunes or critical dunes areas as designated by the state;
 - (18) The boundaries of any man-made lakes, and an indication of the acreage of surface area;
 - (19) A complete narrative description of:
 - (a) The materials and methods proposed to restore the topsoil, and the amount and type of plants or landscaping proposed to restore the finished elevations;
 - (b) The schedule of restoration activities from the permit application year to completion, including the starting and completion of final grading, topsoil replacement, and planting or landscaping, by cell;
 - (c) An estimate of the current costs to complete the restoration of each cell, and a total for all cells;
 - (d) The schedule for removal from the site of all sand mining, moving, processing, loading and transporting equipment, and any other items;

(e) An estimate of the current costs to complete the removal of the items in (d) above.

(F) *Sand mining site reuse plan.* The applicant shall submit a reuse plan (drawing) including the lot or lots on any portion of which sand mining, sand moving, sand processing, sand loading, and sand transportation has been conducted or will be conducted, and including adjacent property within 200 feet of the lot boundaries. A reuse plan submitted in accordance with this chapter shall not be binding upon either the applicant or the city. The submission and review of a reuse plan shall not constitute either an application for approval by the applicant or an approval by the city of a land use plan. The reuse plan shall be prepared by a professional community planner, be dated, sealed, and signed, and have a scale of 1 inch = 100 feet, and shall include the following:

- (1) A North point, scale, date, and revision block;
- (2) Adjacent public streets which provide access to the site;
- (3) The location of existing structures which would remain on site, if any, and the location of existing structures which will be removed from the site;
- (4) Delineation of the 100-year flood plain boundaries;
- (5) Final elevations at 5-foot contours;
- (6) Bench mark references;
- (7) The location of any recorded easements or rights-of-way;
- (8) The boundaries of the lot or lots for which a permit is sought;
- (9) The boundaries of adjacent properties within 200 feet of the lot boundaries;
- (10) The location of any barrier dunes or critical dunes areas as designated by the state;
- (11) The boundaries of any bodies of water, natural or manmade;
- (12) An indication of existing adjacent land uses;
- (13) The location of proposed buildings, structures, or other improvements, and an indication of required setbacks;
- (14) The location of proposed streets, drives, and parking areas;

(15) The location of proposed trees, shrubs, and other landscaping;

(16) The location of existing and proposed water mains, sanitary sewer mains, and storm water drainage facilities, and appurtenances;

(17) The location of existing and proposed electric lines, natural gas mains, and telephone and cable television lines;

(18) A complete narrative description of:

(a) Proposed land use or uses, which is or are compatible with the city's adopted future land use plan;

(b) An estimate of the water and sanitary sewer use factors for the proposed land uses;

(c) The calculation of the amount of storm water runoff from the site in its proposed use;

(d) An estimate of the current costs to extend water mains, sanitary sewer mains, and storm water drainage facilities, with appurtenances, to the site in sufficient capacities to serve the proposed use;

(e) The proposed schedule for implementing the proposed use described in (a) above.

(G) *Fees.* The applicant shall submit a permit application and review fee, to be remitted to the city in such amounts and at such times as follows:

(1) \$1,500 to be remitted simultaneously with the submission of the other submittals required by this section;

(2) The city's actual costs for review of a permit application, including the fees of a planning consultant retained specifically to review an application, the costs of city employees to review an application, and the city's costs for giving notice of the public hearing on the application, as follows:

(a) Any amount not covered by the \$1,500 deposit shall be remitted by the applicant to the city not later than 30 days following receipt of the city's invoice.

(b) In the event that the actual costs of the city are less than the amount of the deposit, the surplus shall be remitted by the city to the applicant not later than 30 days following the city's determination of the actual costs.

(H) *Number of copies; form; date of submission.* An applicant for a sand mining permit shall submit 12 copies of all materials to the Building Inspector at least 90 days prior to the

proposed date of commencement of operations, or at least 90 days prior to the expiration of any previously issued sand mining permit. For any required submittal with a 1 inch = 100 feet scale, an applicant shall submit one copy at scale and 12 reduced to 24-inch x 36-inch copies. Any incomplete submittal shall be returned to the applicant. An applicant is encouraged to review a draft submittal with the Building Inspector prior to the submittal of an official permit application. (Ord. 140, passed 12-19-94)

§ 152.17 APPLICATION REVIEW AND APPROVAL; ISSUANCE OF PERMIT.

(A) *Initial review.* Upon receiving a complete application for a sand mining permit, the Building Inspector shall review the application for compliance with the requirements of this chapter. The Building Inspector may retain a planning consultant to assist in the review of the application.

(B) *Report of Building Inspector.* After completing his or her review of the application, the Building Inspector shall give a written report on the applicant's compliance with the requirements of this chapter to the Planning Commission.

(C) *Notice of hearing.* At the same time he or she submits the report and the application to the Planning Commission, the Building Inspector shall schedule a public hearing on the application by the Planning Commission. Notice of the public hearing shall be published not more than 15 days and not less than five days prior to the public hearing in a newspaper of general circulation in the city. Notice of the public hearing shall also be mailed by first class mail to owners of property within 300 feet of the boundaries of the lot or lots proposed for sand mining.

(D) *Hearing before Planning Commission.* At the public hearing, the Planning Commission shall receive a presentation from the applicant regarding his or her application, and shall receive written and oral comments regarding the application and the effects of the proposed sand mining upon persons and property within 300 feet of the proposed mining site and on the city as a whole.

(E) *Additional information; Planning Commission review.* After the public hearing, the Planning Commission may request additional information from the applicant. After the public hearing and after receiving and considering any additional information, the Planning Commission shall either recommend approval of, recommend disapproval of, or make no recommendation on, the permit application to the City Council, and shall transmit the permit application to the City Council.

(F) *City Council review.* The City Council shall review any recommendation from the Planning Commission and shall consider the permit application for approval or disapproval.

(G) *Non-approval by City Council.* If the City Council does not approve the permit application, it shall advise the applicant in writing of its reasons for not approving the permit application.

(H) *Approval by City Council.* If the City Council approves the permit application, the Building Inspector shall issue a sand mining permit to the applicant upon receiving the required performance guarantee (see § 152.19) in the amount established by the City Council. The application and all documents, drawings, and plans submitted with the permit application shall be incorporated by reference into the permit issued by the Building Inspector.

(I) *Joint issuance of permits.* If the person or firm authorized to conduct sand mining operations and the owner of the sand mining site are not the same person or firm, then the Building Inspector shall issue an authorized permit jointly to the operator and property owner. (Ord. 140, passed 12-19-94)

§ 152.18 STANDARDS FOR REVIEW OF PERMIT APPLICATIONS.

The following are the standards for Planning Commission and City Council review of permit applications:

(A) the applicant's compliance with the operations, maintenance, performance, reclamation, and reuse standards described in §§ 152.35 et seq.;

(B) the impact of sand mining, moving, processing, loading, and transportation on adjacent property;

(C) the impact of sand mining on the groundwater under the mining site and under adjacent property;

(D) the creation of any public or private nuisance;

(E) the adequacy of the plan for restoration of the site after mining is completed;

(F) the adequacy of the plan for reuse of the site after mining is completed and the site is restored;

(G) the spirit and intent of the city's adopted future land use plan being preserved and promoted by the reuse plan;

(H) the elimination of preferred future land uses for the land to be mined due to the proposed sand mining;

(I) the reasonableness of the applicant's schedule for completion of sand mining, completion of restoration of the mining site, and commencement of reuse of the restored site;

(J) the financial burden placed upon the city by the proposed sand mining;

(K) the commercial necessity of the proposed sand mining;

(L) the impact of the proposed sand mining operations upon existing sand mining

operations in the city;

(M) special conditions which may need to be imposed with approval of an application:

(1) to eliminate or mitigate any potentially adverse impacts upon adjacent property, on public services or facilities, or on the natural environment;

(2) to conserve natural resources or energy;

(3) to ensure that sand mining operations will not create a nuisance or unreasonably interfere with the enjoyment of life or property;

(4) or otherwise to protect the public health, safety and welfare.

(Ord. 140, passed 12-19-94)

§ 152.19 PERFORMANCE GUARANTEE.

(A) *Performance guarantee required; contents.* Each applicant for a sand mining permit for whom a permit has been authorized by the City Council shall submit to the city a performance guarantee in the form of a cash deposit, certified check, irrevocable bank letter of credit, surety bond, or other type of security acceptable to the City Council. The performance guarantee shall name the city as the beneficiary. The performance guarantee shall be conditioned upon the prompt and complete compliance by the applicant with all terms of this chapter and with the terms and conditions of a sand mining permit issued in accordance with this chapter.

(B) *Amount.*

(1) The amount of the required performance guarantee shall be established by the City Council. In establishing the amount, the City Council shall consider the prevailing cost to complete restoration of the sand mining site and to complete removal of all mining, moving, processing and loading equipment and any other equipment if the permittee terminates the operations, court costs, and other reasonable expenses.

(2) In establishing the amount, the City Council shall also consider the amount of any performance guarantees which an applicant may have provided to the Michigan Department of Natural Resources which guarantee completion of any of the work described in this subsection.

(C) *Issuance of permit conditioned on receipt of performance guarantee.* The Building Inspector shall not issue a sand mining permit authorized by the City Council until he or she has received the required performance guarantee as described in this section and in the amount as established by City Council when it authorized the permit.

(D) *Special assessment in case of insufficient performance guarantee.* If the performance guarantee submitted in accordance with this section is insufficient to pay for the costs for restoration of a sand mining site, or to pay for the costs for removal of all mining, moving, processing, loading and transportation equipment, or to pay for the city's court costs and other

reasonable expenses, or to pay for any or all of the above, then any of said costs not covered by the performance guarantee may be reported to the City Assessor to be levied by him or her as a special assessment upon the premises owned by the permittee. Such special assessment shall be subject to review after proper notice is given as in all other cases of special assessments prescribed by the City Charter, and such special assessment when confirmed shall be a lien upon the premises and shall be collected in the same manner as other city taxes, or the city may collect the amount from the owner of the premises in an action of assumpsit, together with costs of suit. (Ord. 140, passed 12-19-94)

Cross-reference:

Taxation, see Charter §§ 6.9 et seq.

Special assessments, see Charter Ch. VII

§ 152.20 TERM OF PERMIT.

Each permit issued by the Building Inspector in accordance with this chapter shall be valid for a period of three years from the date of authorization by the City Council. (Ord. 140, passed 12-19-94)

§ 152.21 TRANSFERABILITY.

A permit issued pursuant to this chapter may be transferred, provided a written request for transfer is submitted to the city, and provided that the City Council approves the transfer. The transfer of an existing permit shall not be unreasonably refused by the City Council. (Ord. 140, passed 12-19-94)

§ 152.22 PERMIT RENEWAL.

(A) *Permit renewal application requirements.*

(1) *Contents.* If an operator with a valid sand mining permit issued in accordance with this chapter desires to continue any sand mining, sand moving, sand processing, sand loading, or sand transportation operations or restoration activities beyond the stated expiration date of the permit, the operator shall submit the following items to the Building Inspector:

(a) a completed sand mining permit application form provided by the Building Inspector, which shall be the same form as described in § 152.16(A) above;

(b) a sand mining operations plan narrative in the same form as described in § 152.16(B) above;

(c) a hydrogeological report updated within three years of the date the permit renewal application is submitted, in the same form as described in § 152.16(C) above;

(d) a sand mining site plan in the same form as described in § 152.16(D) above;

(e) a sand mining site restoration plan in the same form as described in § 152.16(E) above;

(f) a sand mining site reuse plan in the same form as described in § 152.16(F) above;

(g) a permit renewal application and review fee, to be remitted to the city in such amounts and at such times as follows:

1. \$1,500 to be remitted simultaneously with the submission of the other submittals required by this section;

2. the city's actual costs for review of a permit renewal application, including the fees of a planning consultant retained specifically to review an application, the costs of city employees to review an application, and city costs for giving notice of the public hearing on the application, as follows:

a. Any amount not covered by the \$1,500 deposit shall be remitted by the applicant to the city not later than 30 days following receipt of the city's invoice.

b. In the event that the actual costs of the city are less than the amount of the deposit, the surplus shall be remitted by the city to the applicant not later than 30 days following the city's determination of the actual costs.

(2) *Number of copies; form; date of submission.* An applicant for renewal of a permit shall submit 12 copies of all materials to the Building Inspector at least 90 days prior to the expiration date of the previously issued sand mining permit. For any required submittal with a 1 inch = 100 feet scale, an applicant shall submit one copy at scale and 12 copies reduced to 24-inch x 36-inch copies. Any incomplete submittal shall be returned to an applicant. An applicant for renewal of a permit is encouraged to review a draft submittal with the Building Inspector prior to the submittal of an official permit renewal application.

(B) *Permit renewal application procedures.*

(1) Permit renewal application procedures shall be the same as described in § 152.17 above.

(2) In the event that the renewal of a permit is denied, then the applicant shall be provided with a written report stating the reasons for the denial. The City Council shall not unreasonably deny an application for renewal of a permit.

(C) *Standards for review of permit renewal applications.* The Planning Commission and the City Council shall consider those factors described in § 152.18 above in their review of a permit renewal application.

(D) *Renewal permit performance guarantee.* The renewal permit performance guarantee

shall be the same as described in § 152.19 above.
(Ord. 140, passed 12-19-94)

§ 152.35 APPLICABILITY OF SUBCHAPTER.

The minimum operational, maintenance, performance, reclamation and reuse standards provided by this subchapter shall apply to all sand mining sites in the city.
(Ord. 140, passed 12-19-94)

§ 152.36 OPERATIONS STANDARDS.

(A) *Access.* Each sand mining site shall have at least one access to a city street classified as a major street. Each driveway serving a sand mining site shall meet applicable city standards for driveways.

(B) *Barrier dunes.* Except for sand mining on barrier dunes which has been permitted by the Michigan Department of Natural Resources as of the effective date of this chapter, sand mining is prohibited on barrier dunes in the city, and sand mining shall be set back 150 feet from the base of the slope of any barrier dune. Reclamation activities, if authorized, may be allowed within the setback up to the base of the barrier dune slope.

(C) *Burning.* Intentional burning on any sand mining site shall comply with the requirements of city ordinances which regulate intentional burning.

(D) *Clay aquitard.* An operator of a sand mining site shall not disturb in any manner any clay aquitard underlying the sand formations which are being mined. An operator of a sand mining site shall be permitted to mine or to otherwise disturb clay lenses within sand formations which are being mined, so long as those clay lenses are not continuous with a clay aquitard.

(E) *Critical dunes.* Except for sand mining on critical dunes which has been permitted by the Michigan Department of Natural Resources as of the effective date of this chapter, sand mining is prohibited on critical dunes in the city, and sand mining shall be set back 150 feet from any critical dunes area. Reclamation activities, if authorized, may be allowed within the setback up to the edge of the critical dunes area.

(F) *Driveways and on-site roads.* An operator of a sand mining site will control dust on any unpaved driveway or road on the site. As a minimum, the first 75 feet of any driveway to a sand mining site from a city street, which driveway is regularly used in the course of sand mining operations, shall be paved. Driveways leading to a sand mining site shall be secured to prevent unauthorized access during non-operating hours.

(G) *Erosion.* An operator of a sand mining site shall make provisions to prevent the blowing of sand or dust which would be a nuisance to adjacent public or private property. Vegetation indigenous to the undisturbed portion of a sand mining cell shall not be removed prior to commencement of sand mining activities in that cell unless the vegetation removal maintains the ground cover and topsoil within the cell in stable condition.

(H) *Fencing.* Except for fencing installed as of the effective date of this chapter, a fence at least five feet high and of a type to discourage and impede unauthorized entry shall be erected around any areas of a sand mining site where slopes exceed 3:1 and around any other hazardous areas within a sand mining site.

(I) *Glare.* Any lighting fixtures associated with sand mining equipment, sand moving equipment, sand processing equipment, or sand loading equipment shall be directed away from adjacent property so as to avoid as nearly as possible the direction of glare onto adjacent property having substantially the same elevation as the equipment location.

(J) *Hours of operation.* Sand mining and sand moving operations shall be restricted to the hours between 6 a.m. and midnight, except under emergency circumstances.

(K) *Importing sand.*

(1) Importing sand to a sand mining site for which a permit has been issued in accordance with this chapter shall be prohibited unless the sand mining site has been in operation pursuant to a permit that was in existence before January 1, 1994, or a renewal thereof. With regard to sand mining sites that have been in operation pursuant to a permit that was granted before January 1, 1994, or a renewal thereof, the tonnage of sand imported to the sand mining site is limited to 40,000 tons per year. Any sand imported to a sand mining site pursuant to this chapter shall have a grain size different from the sand mined at the sand mining site, and shall be used to blend with sand mined at the sand mining site for commercial use.

(2) An applicant for a permit or renewal permit may apply for a higher limit on the number of tons of sand to be imported per year, provided that the applicant shows that additional tons of blending sands are required for blending with sand mined at the sand mining site for the fulfillment of reasonably expected needs of the applicant's customers.

(3) During the term of any permit issued in accordance with this chapter, a permittee may apply to the City Council for a higher limit on the number of tons of sand to be imported during a specific calendar year, provided that the permittee shows that additional tons of blending sands are required for blending with sand mined at the sand mining site for the fulfillment of reasonably expected needs of the permittee's customers.

(L) *Noise.* At no point on the boundaries of a sand mining site shall the sound pressure level of a sound emanating from any sand mining equipment, any sand moving equipment, any sand processing equipment, and any sand loading equipment exceed 70 dB(A), except for warning devices emitting sound for warning purposes as authorized by law.

(M) *Sand mining equipment, sand moving equipment, sand processing equipment, sand loading equipment, and sand transportation equipment.* Only that sand mining equipment, sand moving equipment, sand processing equipment, sand loading equipment, and sand transportation equipment which has been authorized specifically through the permit process of this chapter is permitted on a sand mining site. If a permittee wishes to add sand mining equipment, sand

moving equipment, sand processing equipment, sand loading equipment, or sand transportation equipment after a permit has been issued pursuant to this chapter, the permittee shall notify in writing the Building Inspector at least 30 days prior to the planned placement of the equipment. The Building Inspector may authorize the placement of the equipment, or, if the Building Inspector believes the proposed equipment would result in a significant, material, and substantial change in the permitted sand mining operations, the Building Inspector may refer the request to the Planning Commission for approval or disapproval. In the event the Building Inspector refers an equipment placement request to the Planning Commission, the permittee shall not install the proposed equipment until the Planning Commission authorizes the installation.

(N) *Screening.* Residential uses and public streets adjacent to a sand mining site shall be screened from sand mining operations with a minimum six-foot high screen. Acceptable screening methods are raised earth berms, coniferous trees, fences which provide 80% solid visual barrier, and natural topography.

(O) *Setbacks.*

<i>Type of Equipment</i>	<i>Setback from Property Lines (in feet)</i>	<i>Setback from Public Streets (in feet)</i>	<i>Setback from Lake Michigan (in feet)</i>	<i>Setback from Grand River (in feet)*</i>	<i>Setback from "the Sag" (in feet)</i>
Mining	150	200	1,000	400	25
Moving	150	200	1,000	0	0
Processing	500**	1,000	1,000	150	150
Loading	1,000	1,000	1,000	0	0
* Does not include the embayment commonly known as "the Sag."					
** Except for processing equipment in place as of the effective date of this chapter. Setbacks of existing processing equipment shall not be reduced.					

(P) *Signs.* Any sign on a sand mining site shall comply with city sign regulations applicable to industrial use zones.

(Q) *Slopes.*

(1) Any sand mining site shall have slopes restored as follows:

- (a) surface slopes: minimum three feet horizontal/one foot vertical;
- (b) subsurface slopes:

1. minimum six feet horizontal/one foot vertical from water's edge to six feet deep;

2. minimum one foot horizontal/one foot vertical beyond six feet deep.

(2) A permittee may apply to and receive from the Planning Commission a variance from these requirements which would allow steeper restored surface slopes, provided the permittee can demonstrate that steeper surface slopes would provide a more orderly transition to undisturbed topographic features.

(R) *Structures.* Any existing or new structure, or any addition thereto, on a sand mining site must comply with applicable city building codes and ordinances.

(S) *Subsurface mining.* No subsurface mining shall be conducted below the 550-foot USGD elevation. Any subsurface mining activity shall also comply with applicable state regulations.

(T) *Surface mining.* Any surface mining activity shall comply with applicable state regulations.

(U) *Truck traffic.* If trucks will be used to ship sand from the mining site or to import sand to the mining site, then said trucks shall follow a route designated by the City Council to pose the least interference with other traffic. If trucks are so used, the permittee shall be responsible for removal of any sand which falls from trucks onto public streets, without requiring any notice or request from the city.

(V) *Vegetation existing.* Vegetation existing on a sand mining site shall not be removed preparatory to sand mining so as to expose sand to erosion. Vegetation indigenous to the undisturbed portion of a sand mining cell shall not be removed prior to commencement of sand mining activities in that cell unless the vegetation removal maintains the ground cover and topsoil within the cell in stable condition. On-site burying of existing vegetation is prohibited.

(W) *Waste.*

(1) No trash, rubbish, junk, refuse of any kind, inoperable vehicles or equipment, building materials, or unwholesome substances shall be permitted to accumulate at any sand mining site, unless the same is contained in a dumpster in accordance with the provisions of Ord. 120, passed 11-28-90, the dumpster ordinance, or, in the case of inoperable vehicles or equipment, unless they are housed within a building or structure or are enclosed completely by an opaque fence which is erected and maintained in compliance with city ordinances.

(2) Building materials on a sand mining site to be used as part of construction on the site for which a city building permit has been issued are not considered waste.

(X) *Water body creation.* If creation of a body of water is otherwise authorized to result from sand mining operations, such a body of water shall not be permitted to become stagnant. Final underwater slopes shall be as required above. Beyond the intercept of submerged slopes, the minimum depth of such a body of water shall be ten feet. Creation of a body of water shall also comply with state regulations.

(Ord. 140, passed 12-19-94) Penalty, see § 152.99

Cross-reference:

Accumulation of rubbish, junk vehicles, and the like, see § 91.02

Burning, see Ch. 92

Building regulations, see Ch. 150

§ 152.37 RESTORATION REQUIREMENTS.

(A) *Reclamation and restoration.* Within 12 months after the termination of sand mining on a sand mining site, the permittee shall have completed the following:

(1) restoration of the sand mining site in accordance with the last restoration plan submitted by the permittee and approved by the city; and

(2) the removal of all sand mining equipment, all sand moving equipment, all sand processing equipment, all sand loading equipment, and all sand transportation equipment, above or below ground, or in, on, over or under water.

(B) *Restoration plan.* Any required restoration plan shall provide for restoration of the surface with dune grass (*amophilia*) at 24 inches on center with appropriate fertilizer, or an approved alternate, to within ten feet of any water body that may be created. Any required restoration plan shall provide for restoration of above-surface and below-surface slopes as required by this chapter. No restoration of a mining site, including any filling, is permitted except in accordance with a permit issued pursuant to this chapter. Restored areas of a mining site shall be maintained by the permittee for at least one year.

(Ord. 140, passed 12-19-94) Penalty, see § 152.99

§ 152.38 REUSE REQUIREMENTS.

Each applicant for a sand mining permit shall submit a reuse plan for each sand mining site, which

plan shall indicate a use or uses for the sand mining site when sand mining has been completed and when the sand mining site has been restored. Each use indicated in a reuse plan shall be compatible with the city's future land use plan.

(Ord. 140, passed 12-19-94)

ADMINISTRATION AND ENFORCEMENT

§ 152.50 RIGHT OF ENTRY.

The Building Inspector shall have the right to enter and to inspect a sand mining site at all

reasonable times for purposes of monitoring compliance with this chapter and with the terms of any permit issued pursuant to this chapter.

(Ord. 140, passed 12-19-94)

§ 152.51 NONCOMPLIANCE; PERMIT REVOCATION; APPEALS.

(A) If the Building Inspector determines any instance of noncompliance with the terms of this chapter or with the terms of a permit issued pursuant to this chapter, the Building Inspector shall notify the permittee in writing of the instance or instances of noncompliance, and shall give the permittee 30 days to comply with the terms of this chapter and with the issued permit.

(B) If a permittee has not brought his operations into compliance as requested by the Building Inspector at the expiration of the 30-day notice period, the Building Inspector shall deliver to the permittee at the local business address listed on the permit a notice of revocation of permit. Upon receipt thereof, the permittee shall promptly cease all sand mining operations until the entire operation is brought into compliance as requested.

(C) If a permittee disagrees with a determination of the Building Inspector, a permittee may obtain a de novo redetermination of the facts and the law from the City Manager. A permittee shall file an application for redetermination with the City Manager no later than 30 days after the determination of the Building Inspector was delivered or mailed to the permittee. A record shall be made of the redetermination hearing. A permittee who is aggrieved by the redetermination of the City Manager may appeal the redetermination by filing an appeal with the Circuit Court of Ottawa County no later than 30 days after the date that the redetermination was delivered or mailed to the permittee. On appeal, the Circuit Court shall review the record and the decision of the City Manager to insure that the decision: (1) complies with the laws of the state; (2) is based upon proper procedure; (3) is supported by competent, material, and substantial evidence on the record; and (4) represents the reasonable exercise of discretion by the City Manager.

(Ord. 140, passed 12-19-94)

§ 152.99 PENALTY.

A violation of this chapter is a civil infraction with a maximum fine of \$500. This chapter may also be enforced in the Ottawa County Circuit Court. Failure of a permittee to pay a fine or cost within 30 days after due will result in a lien against land, buildings or structures.

(Ord. 140, passed 12-19-94)