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# Private Acts of 1997 Chapter 29

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Sincerely,

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# Private Acts of 1997 Chapter 29

**SECTION 1.** As used in this act, unless the context otherwise requires:

(1) "Excavate or excavation" means the removal from, or addition of soil to, a site for the removal, extraction, or mining of soils, limestone, gravel, rock, clays, or of any other mineral by whatever process. Excavation shall also be defined as including any earthmoving activity, other than mineral extraction, which involves over fifty (50) acres.

(2) "Process or processing" means all functions, work, facilities, and activities conducted or constructed on a site of any size, the purpose of which is the development, extraction, or benefaction of mineral deposits. This definition shall also be deemed to include pre-mining site preparation activities, all uses reasonably incidental to, with the exception of chemical processing plants, and all post-mining reclamation activities; and

(3) "Grade or grading" means any earthmoving which affects an area between two (2) and fifty (50) acres, and which is being conducted for purposes other than the extraction of any type of rock or mineral which has commercial value.

**SECTION 2.** The purpose of this act is to provide minimum development standards for earth products excavation and processing in the unincorporated areas of Johnson County so that they will be developed in a manner such as to preserve and protect the health, safety, convenience, order, prosperity and general welfare of the citizens of Johnson County through a lessening of traffic hazards and congestion, the abatement of noise, air and water pollution, the prevention of soil erosion and preserving and protecting soil stability, the preservation of aesthetic qualities, and the protection of persons and property who may otherwise be adversely affected by blasting effects and other dangers, if any, presented by such operations. It shall be unlawful to excavate or process earth products unless such operation meets the requirements of this act.

**SECTION 3.** The minimum standards which may be required for the excavation or processing of earth products shall be as follows:

(1) That the proposed excavation and its finished slopes and banks will not impair the potential future utility and development of the property after excavation operations have been completed.

(2) That no permanent machinery or structures shall be erected or maintained on the property which would tend to impair the potential future utility and development of the property after excavation operations have been completed.

(3) That appropriate measures shall be taken to protect and preserve creeks or other bodies, sources or supplies of water, both surface and ground, and adjacent or nearby flora, fauna, or other vegetation.

(4) That appropriate measures shall be taken so as not to depress land values around the proposed excavation and processing operations, or otherwise adversely affect surrounding persons or property in the neighborhood; including, but not limited to, establishing hours of excavation operations, noise and vibration standards.

(5) That appropriate measures shall be taken for management of storm water on the property both during and after excavation operations have been completed.

(6) That appropriate measures shall be taken to provide for management of any nuisance from dust, or wind erosion, at storage areas, yards, access roads, service roads, or other untreated open area within the property.

(7) That appropriate measures shall be taken to provide for soil erosion and sediment control management on the property both during and after excavation operations have been completed.

(8) That appropriate measures shall be taken to provide for management of truck access to and from excavation and processing operations so as to minimize danger to traffic and nuisance to surrounding properties.

(9) That appropriate measures shall be taken to control outside access to any part of the property in which excavation and processing operations or terrain factors may cause danger; including, but not limited to, suitable fencing, embankments or other barriers necessary for the protection and safety of vehicular and pedestrian traffic.

(10) That appropriate measures shall be taken to provide for the reclamation of the property after excavation and processing operations, or any phase thereof, have been completed.

(11) That appropriate measures shall be taken to guarantee faithful performance and completion of the reclamation work in accordance with plans as approved and any conditions of approval; including, but not limited to, permit expiration and renewal requirements, topsoil stockpile requirements, landscaping requirements and the filing of a corporate surety bond with the County Clerk in a form satisfactory to the County Attorney and in an amount approved by the County Commission to guarantee faithful performance and completion of the reclamation work in accordance with plans as approved and any conditions of approval, which bond shall cover a period of time not less than three (3) months beyond the period during which any permit obtained from Johnson County pursuant to this act is effective.

(12) That appropriate measures shall be taken to provide for the minimum setback of excavation and processing operations from any property line, public road (highway, street or similar right-of-way), publicly owned facility (park, school, or any building or similar structure), place of public assembly (church, store, office, restaurant or similar facility) or residence, necessary for the protection and safety of persons or property, or to insure the appropriate and reasonably neat appearance of excavation and processing operations from the surrounding neighborhood until final reclamation of the property after operations, or any phase thereof, have been completed.

(13) That appropriate measures shall be taken to provide for a fence or suitable barrier for the purpose of minimizing objectionable noise and screening operations from the view of vehicular or pedestrian traffic and neighboring property owners.

(14) That in considering any matter relevant to the authority granted by this act, in addition to the foregoing matters, the Planning Commission shall also be guided by the purpose of this act.

**SECTION 4.** In exercising the powers granted to it by this act, the Johnson County Planning Commission shall adopt regulations governing earth products excavation or processing operations, which regulations may provide as follows:

(a) The owner and any lessee of the land parcel proposed for earth products excavation or processing operations may be required to submit an application and plan for development to the Johnson County Planning Commission. The application and plan may be required to contain, but not be limited to, the following:

(1) A narrative describing:

- (i) The development, including location of development and adjacent properties;
- (ii) The schedule for grading and construction activities including: start and completion dates; sequence of grading and construction activities; sequence for installation and/or application of soil erosion and sediment control measures; sequence for final stabilization of the project site;
- (iii) The design criteria for proposed soil erosion and sediment control measures;
- (iv) The construction details for proposed soil erosion and sediment control measures;
- (v) The installation and/or application procedures for proposed soil erosion and sediment control measures;
- (vi) The operations and maintenance program for proposed soil erosion and sediment control measures;
- (vii) Proposed record-keeping program; and
- (viii) The identification of the person responsible for recordkeeping and monitoring required control measures, and who will be the Planning Commission's contact.

(2) A site plan map prepared by a licensed engineer, landscape architect, architect, and/or surveyor, as may be appropriate, and in accordance with state law regarding the practice of these professions. Drawings shall be at an appropriate scale to fit on 2' x 3' sheets, showing:

- (i) The boundaries of the property where the excavation is proposed and the area to be excavated, including principal wooded areas, any rock outcrops, any surrounding streets and property lines;
- (ii) The existing and proposed topography (including bottom limits of the proposed excavation) using two (2) foot contours including soil types, wetlands, watercourses and water bodies, which contours shall be prepared from an actual field survey and based on a benchmark noted and described on the map, the proposed area alterations including cleared, excavated, filled or graded areas and, if applicable, new property lines;

- (iii) Location of all land subject to flooding;
- (iv) Dimensions and calls of all property lines;
- (v) North point, scale, acreage of site, an location map;
- (vi) Location and dimensions of all existing and proposed structures (including signs and utilities), street or road rights-of-way, sidewalks, and easements;
- (vii) Plans for vehicular and pedestrian access to the property and internal circulation to and from the excavation area, utilities, solid waste disposal, landscaping and open space, signage, and off-street parking;
- (viii) Plans for storm water drainage showing existing and proposed drainage on the property;
- (ix) Proposed location of and design details for all proposed soil erosion and sediment control measures and the sequence for installation and/or application of those soil erosion and sediment control measures; and
- (x) Any other information deemed necessary and appropriate by the applicant or requested by the Planning Commission.

(3) A key map at an appropriate scale (not less than 1" = 1,000') to fit on 2' x 3' sheets, showing any and all public roads, publicly owned facilities, places of public assembly and residences within two thousand (2,000) feet of the outer boundary of the property.

(4) A certified plan for storm water drainage shall be included with the site plan that identifies all easements, drainage structures including sizes/capacities, and other pertinent information concerning the assumptions upon which the plan is based. The estimated storm water runoff based on an appropriate storm frequency design, to be approved by the Johnson County Planning Commission, shall be calculated for predevelopment and post-development condition. Any increase in storm water runoff resulting from the development shall be detained on-site by appropriate means, such as detention basin, or other acceptable methods, and shall be released from the site so that downstream property, watercourses, channels, or conduits shall not receive storm water runoff from the site at a higher peak flow rate than that which existed prior to the development of the site. The Planning Commission may require the use of a larger storm frequency design in areas of critical concern.

Any discharge plans and/or permits required by any local, state or federal governmental agency having jurisdiction shall be submitted with the site plan.

(5) The Planning Commission may require the submission of such additional information, including, but not limited to, data on soil conditions, location and depth of rock ledge, ground water conditions and any other appropriate matters that it deems necessary to protect the public health, safety, convenience, order, prosperity and general welfare, or to make a reasonable review of the application.

The Planning Commission may waive in whole or in part any requirement for submission of an application in cases where such are not deemed necessary for reasonable review of the application.

(b) Each proposed earth products excavation or processing operation may be required to meet the minimum standards established pursuant to this act.

**SECTION 5.** It shall be unlawful for any person to excavate for earth products in the unincorporated part of Johnson County unless a permit is obtained from Johnson County or its designated agent.

**SECTION 6.** This act shall be enforced by the Johnson County Planning Commission.

(1) Any person who shall willfully neglect or refuse to comply with any of the provisions of this act shall be guilty of violating this act and, upon conviction, shall be fined not less than two dollars (\$2.00) nor more than fifty dollars (\$50.00) for each offense. Each day of violation shall constitute a separate offense.

(2) Any excavation for earth products in violation of these regulations shall be deemed an unlawful excavation and the County Attorney or other official designated by the Johnson County Board of Commissioners, or any adjacent or neighboring property owner who would be damaged by such violation, in addition to other remedies, may institute injunction, mandamus or other appropriate action to cause the excavation to be abated.

**SECTION 7.** This act shall be administered by the Johnson County Planning Commission.

(1) All plans and plats for excavation for earth products may be required to be submitted a specified number of working days before the regular meeting date of the Planning Commission. These plans will be given preliminary and final approval by the Planning Commission.

(2) Lawful pre-existing non-conforming excavations for earth products may be required to provide the Johnson County Planning Commission with all facts and data which demonstrate that a lawful pre-existing non-conforming excavation for earth products does exist. If the Johnson County Planning Commission shall find that a lawful pre-existing non-conforming excavation for earth products does exist, the Johnson County Planning Commission may waive any standard that is inapplicable to existing operations. If the Johnson County Planning Commission shall not find that a lawful pre-existing non-conforming excavation for earth products does exist, the Johnson County Planning Commission may require the owner and any lessee to conform to all of the standards in this act.

(3) Expansion of lawful pre-existing non-conforming excavations for earth products may be required to be approved by the Johnson County Planning Commission, and conform to the standards in this act.

**SECTION 8.** Variances may be granted to any part of this act by the Planning Commission for good and sufficient reasons.

**SECTION 9.** The provisions of this act shall supersede any less stringent provisions of any ordinance of Johnson County.

**SECTION 10.** If any provisions of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

**SECTION 11.** Specific standards authorized to be set by this private act, and amendments to these standards, may be initiated by the Johnson County Planning Commission, the Johnson County Board of Commissioners, a resident of Johnson County, or other persons or agents interested in these regulations. Proposed standards or amendments to them must first be submitted to the Johnson County Planning Commission for approval, disapproval, or suggestions.

The Johnson County Board of Commissioners will approve or disapprove such standards or amendments to them at their next regularly scheduled and/or called meeting. Standards and amendments to them shall become effective upon approval by the Johnson County Board of Commissioners, the public welfare requiring it.

**SECTION 12.** This act shall have no effect unless it is approved by a two-thirds ( $\frac{2}{3}$ ) vote of the county legislative body of Johnson County. Its approval or non-approval shall be proclaimed by the presiding officer of such body and certified by him to the Secretary of State.

**SECTION 13.** For the purpose of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective upon being approved as provided in Section 12.

Passed: April 21, 1997.

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