

COUNTY OF HORRY)
)
STATE OF SOUTH CAROLINA)

ORDINANCE 96-2020

AN ORDINANCE TO AMEND THE ZONING ORDINANCE, OF HORRY COUNTY AND TO REMOVE MINING PERMITS AND STANDARDS THEREOF.

WHEREAS, Horry County Council approved Ordinance 141-05 on February 7, 2006 establishing conditional use standard for all commercial mining in the AG1, AG2, LFA, FA, CFA, R-1, R-2, and RE zoning districts; and

WHEREAS, Horry County Council believes that it would also be appropriate to allow mines providing material specially for any public project, including projects undertaken by the Federal Government, the State or any political subdivision of the state, including Horry County, public agency or special purpose district should have the same exceptions as mines that operate for the benefit of SCDOT; and

WHEREAS, the South Carolina Mining Act and Mining Compact, along with Federal laws, provide comprehensive regulation and permitting requirements for the operation of mines, which preempt County ordinances and regulation, with the exception of zoning laws that do not otherwise conflict with the State and Federal laws; and

WHEREAS, The purpose and intent of this section, as amended herein,, is to promote mining as a source of essential materials required to facilitate the construction in Horry County in a manner that promotes economic development and ensures the protection of environment, health, safety, and welfare of the citizens of Horry County. This section, as amended herein, is not intended to supersede regulations from state or federal agencies or to supersede state or federal law. This section, as amended herein, specifically recognizes that mining operation and activities are controlled by: (i) South Carolina Mining Act, S.C. Code Ann. §§ 48-20-10 *et seq.*; (ii) (ii) South Carolina Mining Compact, S.C. Code Ann. §§ 48-21-10 *et seq.*; (iii) Stormwater Management and Sediment Reduction Act §§48-14-10, *et al.*, (iv) the Clean Water Act, 33 U.S.C. §§1251, *et seq.*, (v) South Carolina Pollution Control Act, S.C. Code Ann. §§ 48-1-10, *et. seq.*, (vi) Clean Air Act, 42, U.S.C. 7401 *et. seq.* and (ix) regulations promulgated thereto. This section, as amended, recognizes that the South Carolina Department of Health and Environmental is the agency responsible for administering the South Carolina Mining Act, South Carolina Pollution Control Act, Clean Water Act, Clean Air Act and Stormwater Management and Sediment Reduction Act and regulations promulgated thereunder. The listing of these specific statutes is not intended to be exhaustive but is intended to be illustrative of the scheme governing mining activities in Horry County and these statutes, *inter alia*, are the controlling authority for mining in Horry County. The intent of this section, as amended, is no act shall be taken that conflicts with these authorities; and

WHEREAS, Horry County Council sees a need to remove from County regulation and ordinance mining requirements that are already subject to regulation and permitting by, *inter alia*, the Clean Water Act, National Pollutant Discharge Elimination System ("NPDES") program, South Carolina Pollution Control Act, South Carolina Mining Act, South Carolina Mining Compact Act, and similar programs and regulations which are appropriately and adequately administered by the South Carolina Department of Health and Environmental Control ("SCDHEC").

NOW THEREFORE the power and authority granted to the Horry County Council by the Constitution of the State of South Carolina and the powers granted to the County by the General Assembly of the State ordain it ordained that:

- 1) Amendment of Horry County Code of Ordinances to delete Article VI Mining Permits of Chapter 13 of the Horry County Code of Ordinances in its entirety.
- 2) Amendment of Horry County Code of Ordinances: Appendix B, Article V Section 532 of the Horry County Code of Ordinances shall be as amended to read as follows:

532. - Mining.

Unless exempt, a certificate of zoning compliance must be obtained by the property owner or operator of any mining operation prior to removal of excavated materials to be hauled off-site. The following exemptions, performance and design criteria and levels of review and approval are hereby established for mining.

A. The following uses or acreages are exempt from this section:

1. If all excavated material is kept on-site, no review or approval is required and said excavation is exempt from this section.
2. A mining operation subject to a state or federal approval, Mining Operating Permit, Mining General Permit, mine-related permit for Mining discharges and stormwater, or air emission permitting program is deemed compliant with all county zoning ordinances and is exempt from this section.
3. The removal and hauling of excavated material for the construction of a commercial development or residential subdivision that has received construction plan approval and a county stormwater permit is exempt from this section.
4. The removal and hauling of excavated material if all excavated materials from a site are used solely for the construction of a public project, including projects undertaken by the federal government, the state or any political subdivision of the state, including Horry County, public agency or special purpose district (a "Public Project") is exempt from this section. The exemption in this subsection is limited to the Public Project or SCDOT contract. To qualify for an exemption pursuant to this paragraph, the following information and documentation must be provided by the property owner and/or site operator to the Zoning Administrator:
 - (a) A letter from the South Carolina Department of Transportation ("SCDOT") or Public Project engineer identifying the contractor, the SCDOT file# or Public Project name, the start date and end date of the contract, and copy of the Mine-Related NPDES permit for Discharges and Stormwater issued by SCDHEC.
5. Mines / ponds up to and including five (5) acres are exempt from the requirements of this sub-section. To qualify for an exemption pursuant to this section, the following design criteria is established:
 - (a) Mines / ponds shall be a minimum of twenty-five (25) feet from waters of the U.S. and State, unless a Clean Water Act §404 permit is issued by U.S. Army Corps of Engineers;

- (b) Ponds shall be a minimum of twenty-five (25) feet from a property line unless a written agreement with an adjacent property owner is obtained; and
- (c) Permits or approvals may be required from SCDHEC and/or UDSA for farm pond approvals.

B. All other mining activity shall be allowed in all zoning districts as conditional uses subject to the following conditions:

1. Mining activity greater than five (5) acres shall be allowed as conditional uses in all zoning districts subject to the following design and performance criteria:

- (a) Mines shall be a minimum of twenty-five (25) feet from waters of the U.S. and State, unless Clean Water Act §404 permit is issued by U.S. Army Corps of Engineers;
- (b) Mines shall be a minimum of twenty-five (25) feet from a property line unless a written agreement with an adjacent property owner is obtained; and
- (c) Where an unpaved county road is used to access the site, the owner and/or operator shall maintain two hundred (200) feet in the direction of traffic to and from the site, using Best Management Practices, as defined in S.C. DHEC regulations and maintaining the road in a condition such that the road conditions are not less than the pre-existing condition prior to commencement of any mining activity.
- (d) A pre-construction meeting with county engineering must be held to assess county road conditions for the two hundred feet of site access in the direction of travel and develop a maintenance plan for such roads, which maintenance plan shall address:
 - (i) grading and watering for county dirt roads;
 - (ii) sweeping for county paved roads;
 - (iii) shall show the anticipated routing of all truck traffic to minimize impact to surrounding residences; and
 - (iv) identify areas that require signage, if needed, for safety purposes.
- (e) Mining operations must be screened and buffered as follows: (i) by a six (6) foot high opaque screen of natural vegetation within a fifty (50) foot buffer area; or (ii) a six (6) foot high berm, or fence with an opaque privacy screen or wall at least six (6) feet in height above grade shall be required within a twenty-five (25) foot buffer area. Provided, however, that no screen is required along any property boundary where the mining operations are setback two hundred and fifty (250) feet, or more from the property line. These screening and buffering provisions shall supersede the requirements of the parking, landscape, buffer, stormwater and tree preservation standards otherwise delineated in Horry County Code of Ordinances.

3) **Severability:** If a Section, Sub-section or part of this Ordinance shall be deemed or found to conflict with a provision of South Carolina law, or other pre-emptive legal principle, then that Section, Sub-section or part of this Ordinance shall be deemed ineffective, but the remaining parts of this Ordinance shall remain in full force and effect.

4) **Conflict with Preceding Ordinances:** If a Section, Sub-section or provision of this Ordinance shall conflict with the provisions of a Section, Sub-section or part of a preceding Ordinance of Horry

County, then the preceding Section, Sub-section or part shall be deemed repealed and no longer in effect.

5) **Effective Date:** This ordinance shall become effective on third reading.

AND IT IS SO ORDAINTED, ENACTED AND ORDERED.

HORRY COUNTY COUNCIL



Johnny Gardner, Chairman

Harold G. Worley, District 1
Dennis DiSabato, District 3
Tyler Servant, District 5
Orton Bellamy, District 7
W. Paul Prince, District 9
Al Allen, District 11

Bill Howard, District 2
Gary Loftus, District 4
Cam Crawford, District 6
Johnny Vaught, District 8
Danny Hardee, District 10

Attest:



Patricia S. Hartley, Clerk to Council

First Reading:	October 6, 2020
Second Reading:	November 17, 2020
Third Reading:	December 8, 2020