

**ZONING LOCAL LAW
TOWN OF KIRKWOOD**

ARTICLE X – MINING

**Local Law #7-2003
Adopted April 1, 2003**

Section 1001. Permitted Uses

A. No person shall do, conduct, perform, or engage in any mining, or operate a mine, within the Town on or after the effective date of the addition of Article X to the Zoning Local Law except within a Mining District as hereinafter defined and except in compliance with the provisions of Article X of the Zoning Local Law. Mining shall be permitted in a Mining District within the Town as hereinafter provided in this section.

B. Designation of Mining Districts.

Mining shall be allowed in districts designated by the Town Board of the Town of Kirkwood (hereinafter referred to as Town Board) as provided in Subsection C of this section. It is the intention of this section to allow the creation of a Mining District at any location deemed appropriate by the Town Board; provided, however, that the Town Board shall consider the general zoning classification in which a proposed Mining District is located, along with the other factors specified in Subsection D of this section, in determining whether to create a Mining District.

Within any Mining District, no more than fifteen (15) acres (exclusive of the berms and the roadway) of, on, or within any lot shall be used for mining at any one time. In calculating said fifteen (15) acres, any portion of a lot which was previously mined in accordance with a valid mining permit issued by the New York State Department of Environmental Conservation (hereinafter referred to as DEC) and which has been subject to reclamation approved by the DEC in accordance with a reclamation plan shall not be counted as part of said fifteen (15) acres, and any portion of such previously mined lot on which minerals, overburden, spoils or takings are stored or stockpiled shall not be counted as part of said fifteen (15) acres.

C. Procedure for Designation of Mining District

1. Districts coincident with existing mined land use plans.

The Town of Kirkwood Town Planning Board (hereinafter referred to as Town Planning Board) shall, within one (1) month following the effective date of this section, identify those areas of land currently being mined pursuant to a valid site plan approval granted by the Town Planning Board, the DEC, or both. Such areas of land shall constitute Mining Districts for the purposes of this section. The Town Planning Board shall report its findings in writing to the Town Board, which shall thereafter cause the Town of Kirkwood Land Use Map to be amended to identify such Mining Districts.

2. Creation of new districts

All new Mining Districts shall be created by the Town Board in accordance with the following procedure:

**ZONING LOCAL LAW
TOWN OF KIRKWOOD**

ARTICLE X – MINING

- a. Any Person wishing to petition the Town for the creation of a Mining District shall submit to the Town Clerk an original and eleven (11) copies of the application submitted by such person to the DEC for a mining permit for the mine in the proposed mining district, or a signed application on a form prescribed by the Town Board (and developed with the recommendations of the Town Planning Board) which shall contain at least the following information and documents:
 - i.. The name, address and telephone number of the applicant, together with the name of the person to contact for further information, if the applicant is not an individual.
 - ii. A map, prepared by a licensed engineer or surveyor, showing the boundaries of the proposed Mining District, as well as a key map showing its approximate location in the Town of Kirkwood. The map shall also show the property lines of the adjacent properties, the names of those adjacent property owners, and the adjacent land uses. The scale of the map shall be no less than one (1) inch equals one hundred (100) feet, unless the Town Board, by resolution, allows a smaller scale.
 - iii. A description of the proposed mining operation, including the type of material to be mined, equipment to be used, approximate tonnage for each year of the next five-year period, and the anticipated useful life of the mine. For the purposes of the preceding two (2) subsections, a mining plan prepared pursuant to Title 27, Article 23 of the New York State Environmental Conservation Law and regulations promulgated thereunder shall be sufficient, provided that the Town Board is satisfied that all relevant requirements thereof have been met; provided, further, that the applicant shall meet all applicable requirements of this section in submitting said mining plan.
 - iv. A reclamation plan, including both a graphic and a narrative description of the proposed land use objective to be achieved in the final stage of reclamation, the proposed method of reclaiming the affected land, providing, where possible, for orderly, continuing reclamation concurrent with mining and a schedule for reclaiming the affected land. The reclamation plan shall contain at least the information required by Title 27, Article 23 of the New York Environmental Conservation Law and any regulations promulgated thereunder, and such plan shall be sufficient, provided that the Town Board is satisfied that all relevant requirements thereof have been met; provided, further, that the applicant shall meet all applicable requirements of this section in submitting said reclamation plan.

**ZONING LOCAL LAW
TOWN OF KIRKWOOD**

ARTICLE X – MINING

- v. A full environmental assessment form, prepared by a licensed professional engineer or architect, to assist the Town Board in its determination of environmental significance of the proposed creation of the mining district under the New York State Environmental Quality Review Act. Any Environmental Impact Statement required shall be submitted on electronic media in Microsoft Word format.
 - vi. A fee pursuant to Local Law 10- 1995 entitled “A Local Law Providing for Reimbursement of Professional Consulting Fees” in the amount which will reimburse the Town for the expenses paid by the Town to the Town Engineer (or designated Town consultant) for reviewing the application.
 - vii. Grading drainage plan, pertinent soil characteristics and watercourses, or, if applicable, a Stormwater Pollution Prevention Plan consistent with the requirement of Articles 1 and 2 of the Town of Kirkwood Stormwater Management and Erosion & Sediment Control Local Law (Local Law No. 7 of 2007). The approved site plan shall be consistent with the requirements of Articles 1 and 2 of the Town of Kirkwood Stormwater Management and Erosion & Sediment Control Local Law (Local Law no. 7 of 2007).
- b. The Town Clerk shall forthwith file the original of the application and forward the copies as follows: two (2) to the Town Supervisor, who shall in turn forward one (1) copy to an engineer retained by the Town Board for review and recommendations; one (1) to each remaining Town Board member; one (1) to the Town Attorney or his designee; three (3) to the Chairman of the Town Planning Board; and one (1) to the [Broome] County Department of Planning and Economic Development, with a request for a report and recommendation when required by the General Municipal Law Section 239-m.
- c. The Town Board shall consider the application at its first regular meeting occurring at least ten (10) days following the filing of the application with the Town Clerk or at such other time and date as the Town Board shall determine. The Town Board shall discuss the application with the applicant and shall request any additional information it needs to consider the application. The Town Board may schedule a workshop to discuss the application with the applicant and the Town Planning Board. The Town Board shall also schedule a public hearing to be held at its next regular meeting after receipt of the recommendation (if any) from the Town Planning Board or at any other time and date it shall determine. Notice of the public hearing shall be published in the official newspaper of the Town and posted on the official bulletin board of the Town Clerk at least ten (10) days prior thereto. The Town Board shall also take whatever

**ZONING LOCAL LAW
TOWN OF KIRKWOOD**

ARTICLE X – MINING

steps are necessary to comply with the New York State Environmental Quality Review Act, and the public hearing on the application may be combined with a public hearing on any draft environmental impact statement which the Town Board may require.

- d. At least seven (7) days prior to the public hearing, the applicant shall send notice thereof by certified mail, return receipt requested, to the owners of record of all properties referred to in Section 6.2 hereof. Prior to the public hearing, applicant shall submit to the Town Clerk an affidavit sworn and subscribed before a notary public containing the following information: the names and addresses of all such property owners; a statement verifying that all such property owners' names and addresses are contained on the list; and a statement that all such property owners were properly served. Applicant shall simultaneously also submit the certified mail return receipts for all property owners served along with the affidavit.
 - e. The cost of preparing, publishing and mailing the required notices shall be borne by the applicant. The Town Board shall cancel the public hearing if the applicant fails to submit all of the required information.
 - f. The Town Board shall conduct the public hearing, affording all interested persons an opportunity to speak. At the conclusion of the public hearing, the Town Board shall direct the applicant to submit any additional information it determines is necessary to a determination of the application, if any. The Town Board shall formally act on said application no later than sixty-two (62) days after the public hearing.
 - g. Prior to acting upon said application, the Town Board may obtain a written recommendation from the Town Planning Board as to whether the Mining District shall be created, and the Town Planning Board shall furnish such recommendation within 45 days after a request therefor from the Town Board.
 - h. In the event of a determination by the Town Board creating a new Mining District, the Town Board shall cause the Town of Kirkwood Official Zoning Map to be amended accordingly, and shall forward copies of the petition to the Town Planning Board.
- D. Standards for the creation of Mining Districts. In considering an application for the creation of a Mining District, the Town Board shall consider all relevant factors, including the following:
- 1. The consistency of the proposed Mining District with the Town of Kirkwood Comprehensive Plan and the Zoning Local Law.

**ZONING LOCAL LAW
TOWN OF KIRKWOOD**

ARTICLE X – MINING

2. The character of the neighborhood in which the proposed Mining District would be located.
 3. The general Land Use classification of the area in which the proposed Mining District would be located.
 4. The proximity of the proposed Mining District to other Mining Districts or mining operations.
 5. The proximity of the proposed Mining District to other parcels of land which, in the future, might be the subject of a petition for the creation of a Mining District.
 6. Impact of the mine operation on the immediate area and any haulage ways.
 7. Any other factors the Town Board considers relevant.
- E. Every Mining District shall remain in existence for a period of one (1) year from the date of its creation and approval, or upon the abandonment of mining activities therein (either upon the termination of the mining permit term without renewal or otherwise) whichever is later. Upon the permanent termination of mining operations therein, the owner of the premises or the Person responsible for the mining operations conducted therein shall commence reclamation of the premises in accordance with the Reclamation Plan. If the responsible person has not commenced reclamation within sixty (60) days following the permanent termination of mining activities or fails to complete reclamation in accordance with the Reclamation Plan, the Town may take whatever steps are necessary to accomplish or complete said reclamation, including resort to litigation and resort to the undertaking provided by the mining operator upon the granting of the mining permit. The mining operator shall advise the Town Planning Board in writing upon the commencement and completion of reclamation.
- F. Issuance of Mining Special Use Permits.
1. The Town Board hereby authorizes the Town Zoning Board of Appeals to issue mining Special Use Permits in accordance with the provisions the Zoning Local Law. No Person shall do, conduct, perform, or engage in mining, or operate a mine within the Town, except within a Mining District and except pursuant to a mining Special Use Permit issued by the Town Zoning Board of Appeals in accordance with the procedures set forth in this subsection; provided, however, that it shall be permissible to remove minerals from any parcel of land on a casual basis for noncommercial use without establishing a Mining District or obtaining a mining Special Use Permit

**ZONING LOCAL LAW
TOWN OF KIRKWOOD**

ARTICLE X – MINING

therefor, but in no event shall more than two hundred fifty (250) tons of minerals be removed from any parcel of land during any twelve month period or more than one thousand (1,000) tons of minerals on a cumulative basis, except in a Mining District and pursuant to a mining Special Use Permit issued pursuant to the Zoning Local Law. Any mine site for which the New York State Department of Environmental Conservation has issued a valid mining permit prior to the effective date of Article X of the Zoning Local Law may continue to be operated (subject to the terms and conditions of said mining permit), without the issuance of a mining Special Use Permit hereunder as long as said mine site is not expanded or enlarged beyond the area, size or scope set forth in said mining permit and site plan approval; any expansion or enlargement of said mine site beyond the area, size or scope set forth in said mining permit and site plan approval shall require the operator thereof to apply for, and obtain, a mining Special Use Permit pursuant to Section 1001 of the Zoning Local Law.

2. Applicants for a mining Special Use Permit shall submit to the Town Zoning Board of Appeals eleven (11) copies of the application submitted by such person to the DEC for a mining permit for the mine in the mining district or a signed Town application therefor. If the Town application is submitted, such Town application shall contain the same information as that required for the creation of a Mining District under Subsection C(2) of this section. In the case of the initial creation of a Mining District, the permit application may be combined with the petition for the creation of the Mining District when submitted to the Town Board. The Town Zoning Board of Appeals shall require the applicant to pay, pursuant to Local Law 10-1995 entitled “A Local Law Providing for Reimbursement of Professional Consultation Fees” a fee in the amount which will reimburse the Town for the expenses paid by the Town to the Town Engineer (or designated Town consultant) for reviewing the application; provided, however, that when an applicant applies for a mining Special Use Permit concurrently with an application for the creation of a Mining District, the fee paid pursuant to that application shall be sufficient.
3. The Town Zoning Board of Appeals shall consider the application for a mining Special Use Permit at its next regular meeting following ten (10) days after receipt of the application. The Town Zoning Board of Appeals, in conjunction with the applicant, shall establish its own procedure and timetable for the determination of the application, subject to the requirements of Section 274-b of the Town Law.
4. When the applicant has submitted a complete application, the Town Zoning Board of Appeals may grant and approve a mining Special Use Permit for a mine which meets the following criteria:

**ZONING LOCAL LAW
TOWN OF KIRKWOOD**

ARTICLE X – MINING

- a. The applicable provisions prescribed for the mining Special Use Permit have been met.
 - b. The mining conforms with all applicable regulations governing the Mining District where it is to be located.
 - c. The proposed use will be in harmony with the Town of Kirkwood Zoning Local Law and will not adversely affect the neighborhood if the requirements imposed by the Town of Kirkwood Zoning Local Law are met.
- G. Conditions. In the case of a mining Special Use Permit, conditions placed on such a mining Special Use Permit by the Town Zoning Board of Appeals shall be limited to the following:
- 1. Ingress and egress to public thoroughfares controlled by the Town;
 - 2. Routing of mineral transport vehicles on roads controlled by the Town;
 - 3. Requirements and conditions as specified in the permit issued by the Department of Environmental Conservation under Article 23 of the Environmental Conservation Law concerning setback from property boundaries and public thoroughfare rights-of-way natural or manmade barriers to restrict access, if required, dust control and hours of operation, when such requirements and conditions are established pursuant to subdivision three of section 23-2711 of the Environmental Conservation Law;
 - 4. Enforcement of reclamation requirements contained in mined land reclamation permits issued by the State of New York.

Notwithstanding the foregoing, to the extent authorized by law, if the Town Board is the Lead Agency for purposes of the environmental review of the application for the mining Special Use Permit, the Town Board may impose reasonable conditions and restrictions which address some or all of the following issues and requirements provided that the same are directly related to and incidental to the proposed mining Special Use Permit:

- a. A requirement that the mining is to be designed, located and operated so as to protect the public health, safety and welfare.
- b. A requirement that the mining will encourage and promote a suitable and safe environment for the surrounding neighborhood and will not cause substantial injury to the value of other property in the neighborhood.

**ZONING LOCAL LAW
TOWN OF KIRKWOOD**

ARTICLE X – MINING

- c. A requirement that the mining will be compatible with existing adjoining development and will not adversely change the established character or appearance of the neighborhood.
- d. A requirement that effective landscaping and buffering is provided as may be required by the Town Board.
- e. A requirement that adequate off-street parking and loading are provided in accordance with the Zoning Local Law, and ingress and egress to parking and loading areas are so designed as to minimize the number of curb cuts and not unduly interfere with traffic or abutting streets.
- f. A requirement that site development shall be such as to minimize erosion and shall not produce increased surface water runoff onto abutting properties and other properties between the mine and the nearest tributary to a river.
- g. A requirement that existing public streets and utilities servicing the mining are determined to be adequate.
- h. A requirement that significant existing trees and vegetation shall be preserved to the extent practicable.
- i. A requirement that adequate lighting of the site and parking areas is provided and that exterior lighting sources are designed and located so as to produce minimal glare on adjacent streets and properties.
- j. A requirement that the proposed mining be in harmony with the Zoning Local Law and not adversely affect the neighborhood if the conditions imposed by the Town Board are met.
- k. A requirement that noise from mining activities and related operations shall not be such as to unreasonably interfere with the quiet enjoyment of neighboring properties. Sources of sound emanating from the mining site shall not exceed a 75 dBA sound level limit for any adjacent property receiving such sound, when measured at or within the property boundary of the adjacent property receiving such sound.
- l. A requirement that fugitive dust and flying particles shall be confined to the mining site, and disturbed areas shall be kept to a minimum to reduce sources of dust.
- m. A requirement that impact vibrations and steady-state vibrations shall be limited or reduced so as to minimize their effect on adjoining properties.

**ZONING LOCAL LAW
TOWN OF KIRKWOOD**

ARTICLE X – MINING

- n. A requirement that radio-active materials, toxic gases or vapors shall not be emitted on or from the mining site.
- o. A requirement that no surface water drainage or ground water shall be polluted in any manner that renders it less usable (in quality or quantity for irrigation, swimming, drinking, visual attractiveness or whatever lawful uses are made of water resources to person downstream) than such waters' usefulness as it enters said person's property or area of operation.
- p. Installation by Applicant of a berm to reduce the noise level to the neighboring residents; specification of the height of the berm; seeding of the berm to prevent erosion and to improve the look of the berm; a fixed completion date for the berm; and the slope of the berm.
- q. Arrangement of stockpiles to help muffle the sound from crushing and screening operations; height limits for the piles.
- r. Location or relocation of the exit road to reduce traffic next to the residents across from the mine pit.
- s. A timetable for completion of restoration phases.
- t. Installation and maintenance of rubber belting on chutes and similar equipment used in mining operations to help reduce noise levels.
- u. Widening, oiling and stoning by the Applicant of any Town access roads, in consultation with the Town Commissioner of Public Works.
- v. For additional soil and erosion control, requiring Applicant to:
 - i. Prevent runoff from leaving the Site.
 - ii. Raise/Depress Entrance/Exit to prevent drainage from going onto road.
 - iii. Maintain the Entrance/Exit with clean gravel and keep the same washed (dust and mud free) at all times.
- w. Requiring Applicant to install signage as requested by the Town Commissioner of Public Works, and consult with the Town Commissioner of Public Works regarding recommendations for warning/safety devices.

**ZONING LOCAL LAW
TOWN OF KIRKWOOD**

ARTICLE X – MINING

- x. Requiring Applicant to keep the roads dust and mud free by periodic washing and sweeping, as needed to control dust and flying particles.
- y. Requiring Applicant to provide a Truck Staging Area within the mine; and requiring that trucks awaiting the daily opening of the mine must be staged off public highways on Applicant's Site being used for the mining operation.
- z. Requiring that Applicant shall confine fugitive dust and flying particles to the Permit Area, and:
 - i. In the case of any houses within 500 feet of an active mine area, requiring that Applicant shall annually reimburse the owners thereof for the costs incurred by such owners for washing the outside of such houses once per year. (Such annual reimbursement for any one house shall not exceed the sum of \$250.00, and shall not be paid without prior notice to Applicant and proof of payment of the washing costs),
 - ii. In the case of any houses within 500 feet of an active mine area, requiring that Applicant shall purchase for each house a home air purifier (at a cost not to exceed \$650.00 each) if requested by the homeowner thereof who furnishes a doctor's statement showing that there is a need therefor and that the need was caused by dust from Applicant's mining operation, and
 - iii. Requiring that Applicant shall periodically spray water on stock piles/hoppers, as needed, to control dust and flying particles.
- aa. To attenuate noise, requiring that Applicant shall:
 - i. Lower equipment/raise piles.
 - ii. Annually review efforts to reduce noise levels in June for additional adjustments.
 - iii. Annually review noise effects in September, and
 - iv. Use Applicant's best efforts not to use any crusher or screen before 8 A.M. on Saturdays.
- ab. Requiring that Applicant shall participate in an annual review (between the Town Board, Applicant and other Town officials) within 30 days after the report required by subsection K3 hereof has been filed, with special attention to noise, dust and dirt being confined to the mine area.

**ZONING LOCAL LAW
TOWN OF KIRKWOOD**

ARTICLE X – MINING

- ac. Requiring that Applicant shall, to the extent practicable, not cut certain trees or vegetation on Applicant's property.
- ad. Requiring that Applicant shall plant trees (a double row of seedlings on 8' centers, staggered) along certain roads by a certain date, provided, however, that the trees shall not be less than four feet in height if there are any residences in the immediate area. Applicant shall guarantee that all such seedlings (or trees, as the case may be) shall live for a period of at least one year, and in the event any such seedlings (or trees) shall die prior to the expiration of one year, applicant (at its expense) shall replace said seedlings (or trees).
- ae. Requiring that no topsoil shall be removed from the Site, that overburden shall not be considered topsoil, and that all restoration shall include a minimum of 4 inches of topsoil.
- af. Requiring that for any persons owning residences within the 500 feet designated area, the Applicant shall protect the fair market value of any residences then located within 500 feet of an active mining area from loss of value caused by mining during the term of the Special Use Permit approval; defining the term "active mining area" as including any area used for mining, hauling, or processing, or any area on the site which is unreclaimed; designating those residences within the designated 500 feet area; providing that any such residence owner claiming loss of property value shall be responsible for demonstrating such loss by a professional appraisal, or any other methods which are mutually agreed upon by the residence owner and the Applicant; providing that such protection from loss of value caused by mining shall take the form of reimbursement to be made by the Applicant to the affected residence owners in an amount equal to the difference between:
 - i. The fair market value of the residence prior to the date the Town Board approves and grants the Special Use Permit, and
 - ii. The fair market value of the residence as of the date of the professional appraisal thereof; and providing that any dispute regarding a loss of fair market value caused by mining shall be resolved by arbitration, in accordance with the rules of the American Arbitration Association, and that judgment upon the award may be enforced in any court having jurisdiction thereof.

**ZONING LOCAL LAW
TOWN OF KIRKWOOD**

ARTICLE X – MINING

- ag. Providing that the Town Commissioner of Pubic Works, Town Supervisor, or Town Building and Code Inspector shall have the authority to issue a written notice of violation where he or she determines that the mining Special Use Permit conditions are being violated; upon such written notice, the applicant shall have a reasonable amount of time, at least 2 weeks, to cure such violations; if the violations persist and are found to be significant, the Town Board shall have the authority to revoke the mining Special Use Permit for good cause; the Applicant shall have the right to a hearing prior to any such mining Special Use Permit enforcement action.

- ah. Providing that Applicant shall grant the Town Commissioner of Public Works, Town Supervisor, Town Building and Code Inspector, Town Engineer (or designated Town Consultant) and members of the Town Board a license to enter upon the Site with reasonable prior notice to Applicant to determine that these conditions are being fulfilled and complied with notwithstanding any signs or other notices purporting to limit access to the Site.

- ai. Specifying, in the case of vehicles going to or from the Site, the haul routes to be followed.

- aj. Specifying that Applicant shall refrain from doing any washing of minerals on the Site.

- ak. Requiring if the existing wells of certain neighboring property owners in the vicinity of the mine go dry, and if those neighboring property owners can prove that such condition was directly caused by any action taken on the Site by Applicant during the term of the mining Special Use Permit approval, Applicant shall reimburse those neighboring property owners (up to the sum of \$2,000.00 each) for the costs incurred by said neighboring property owners in drilling a new well on their properties; and providing that any dispute regarding the dry condition of the wells shall be resolved by arbitration in accordance with the rules of the American Arbitration Association, and that judgment upon the award may be enforced in any court having jurisdiction thereof.

- al. Requiring that Applicant shall comply with applicable fuel storage and permit requirements of DEC; Applicant shall provide and maintain on site an on-site secondary container large enough to contain the full volume of the fuel tank on site; and the fuel tank shall at all times be placed within said secondary container; Applicant shall maintain equipment and supplies on site to contain, remediate, and clean up potential spillage, and immediately use same to clean up any actual spillage; vehicle maintenance shall be conducted to minimize and prevent lubricant and

**ZONING LOCAL LAW
TOWN OF KIRKWOOD**

ARTICLE X – MINING

fuel spills; all spills of chemicals, gasoline, motor oil, or hydraulic fluid in excess of one gallon at any one time must be reported within one hour to DEC and Town Supervisor.

- am. Providing that not more than ten (10) acres (exclusive of the berms and the roadway) on the entire site shall be unreclaimed at any one given time.
- an. Requiring that operations shall be conducted in such a manner as to prevent excessive dust and noise.
- ao. Requiring that operations shall generally be restricted to between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday and between the hours of 8:00 a.m. and 12 noon on Saturday, provided, however, that the Town Board may, at its discretion, modify these hours depending on prevailing conditions.
- ap. Requiring that the mine operator shall maintain private and public roads and driveways in a dust-free condition and provide such surfacing or other treatment as may be required by the Town Board at the time of approval of the mining Special Use Permit.
- aq. Requiring that open excavations extending below the level of an adjacent highway shall not be closer to the highway right-of-way than one hundred (100) feet. Operations shall be carried on no closer than twenty-five (25) feet from an adjacent property.
- ar. Requiring that finished slopes in any open mining pit shall not be steeper than allowed by the DEC, and that finished slopes shall be graded and each site shall be fertilized, mulched and seeded to establish a firm cover of grass or other vegetation sufficient to reduce erosion, and that stone walls of a quarry need not be reduced in slope or reseeded.
- as. Requiring that all surface drainage shall be controlled through the use of dikes, barriers and drainage structures to prevent silt, erosion, debris or other loose materials from being deposited on any public or private highway or on other property; and that all provisions for control of drainage water shall be subject to periodic review by the Town Board.
- at. Requiring that fencing shall be provided along property lines for whatever distance the Town Board shall determine to be necessary for protection of adjoining property and the public.
- au. Requiring that screening may be required to reduce the

**ZONING LOCAL LAW
TOWN OF KIRKWOOD**

ARTICLE X – MINING

visual impact of the project on the surrounding properties before mining commences and throughout the duration of the project.

- av. Requiring and providing that whenever the Town Board determines that the excavation of materials is creating a nuisance, or the mining operator has violated the terms of the mining Special Use Permit or of this section, the Town Board may revoke the mining Special Use Permit therefor upon five (5) days written notice after hearing before the Town Board.
- aw. Requiring that no smoke from any source whatever shall be emitted, as measured at the individual property line, of a density greater than, or equal to the density described as No. 2 on the Ringelmann Chart as published by the United States Bureau of Mine provided, however, that the emission of smoke shall not be permitted if it is unreasonably offensive in terms of odor or noxious gases despite its apparent lack of density when measured by the Ringelmann Chart.
- ax. Imposing and requiring such other reasonable conditions and restrictions as are directly related to and incidental to the proposed mining Special Use Permit.
- ay. Grading drainage plan, pertinent soil characteristics and watercourses, or, if applicable, a Stormwater Pollution Prevention Plan consistent with the requirement of Articles 1 and 2 of the Town of Kirkwood Stormwater Management and Erosion & Sediment Control Local Law (Local Law No. 7 of 2007). The approved site plan shall be consistent with the requirements of Articles 1 and 2 of the Town of Kirkwood Stormwater Management and Erosion & Sediment Control Local Law (Local Law no. 7 of 2007).

If the Town Board is not the Lead Agency for purposes of the environmental review of the application for the mining Special Use Permit, the Town Board may request that the Lead Agency impose some or all of the above-described conditions and restrictions.

- H. Term of the Mining Special Use Permit. The term of the mining Special Use Permit shall be coincident with the term of any mining permit issued to the applicant by the New York State Department of Environmental Conservation. Otherwise, the term shall be five (5) years.
- I. Bond. Each mining Special Use Permit shall include a requirement that the applicant submit a bond (if DEC does not require one), with such surety and in such amounts as the Town Board shall prescribe, in favor of said Town Board, conditioned upon the satisfactory reclamation of the mining site upon the completion of mining operations thereon.

**ZONING LOCAL LAW
TOWN OF KIRKWOOD**

ARTICLE X – MINING

J. Renewals. The applicant shall, upon the expiration of each mining Special Use Permit period, obtain a renewal for a like term by filing an application therefor with the Town Board on a form prescribed by the Town Board, or by filing a copy of the DEC renewal form for the subject mine (if there is such a DEC renewal form). In entertaining said renewal application, the Town Board shall consider, to the extent appropriate and applicable, the same factors considered by the Town Board for an initial application, together with the performance of the renewal applicant under previous permits. The Town Board shall require the applicant to pay a fee in the amount which will reimburse the Town for the expenses paid by the Town to the Town Engineer (or designated consultant) for reviewing the renewal application.

K. Inspections and Reports.

1. The Town Board, the Town Building and Code Inspector, and any engineer engaged pursuant to this subsection shall conduct such periodic inspections, on reasonable notice to the mine operator, as they shall deem necessary to ensure compliance with the terms of the mining Special Use Permit and this section.
2. The Town Board may use the Town Building and Code Inspector to inspect each mining operation to determine on a systematic basis its compliance with the mining Special Use Permit and the provisions of this section and to report such determination to the Town Board. The Town Board may devise a schedule for the orderly and systematic inspection of each mining operation.
3. At least thirty (30) days prior to the anniversary of the granting of a mining Special Use Permit, each mining operator shall submit ten (10) copies of a report, certified by the applicant, showing graphically and by narrative the extent of the operations carried on over the previous year, including any variance from the Mining Plan. If the Town Board finds the report or applicant's compliance with the mining Special Use Permit to be defective or deficient in any way, it may consider its expenses of discovering or remedying any such defect in establishing the fee upon the next occurring renewal of the mining Special Use Permit.

L. Violations. The Town Board and the Town Building and Code Inspector shall report, in writing, any violations of the mining Special Use Permit, any violation of this section of the Zoning Local Law, or any apparent violations of applicable United States, New York State or local statutes, local laws, codes, rules or regulations to the Town Board and to the Town Attorney, who shall take whatever steps are available under the Zoning Local Law or any other law to remedy such violations.

For a violation of Article X of the Zoning Local Law or a violation of any provision, term or condition of a mining Special Use Permit issued pursuant to Article X hereof, the provisions of Section 1406 of the Zoning Local Law shall be applicable. Nothing herein shall prevent the Town from pursuing and enforcing remedies and sanctions pursuant to law.