

REVIEWED AS TO FORM  
*[Signature]*  
CODE REVIEW COMM.

168 - 0277

REVIEWED  
*BW*  
LEGAL COUNSEL

98-27178

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Title 18, Deschutes \*  
County Zoning Ordinance, of the Deschutes \*  
County Code, and Declaring an Emergency. \*

98 JUN 11 PM 3:56  
MARY SUE PENHOLLOW  
COUNTY CLERK

ORDINANCE NO. 98-038

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON,  
ORDAINS as follows:

Section 1. ADDING. Chapter 18.52, Surface Mining - SM Zone, of the Deschutes County Code is amended by the addition of section 18.52.115, Extended operating hours, as described in Exhibit "A," attached hereto and by this reference incorporated herein.

Section 2. FINDINGS. Findings to support this ordinance are set forth in the staff report for File No. TA-98-10, attached as Exhibit "B," and incorporated herein by this reference.

Section 3. EFFECTIVE DATE. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist and this Ordinance takes effect on its passage.

DATED this 10 day of June, 1998.

BOARD OF COUNTY COMMISSIONERS OF  
DESCHUTES COUNTY, OREGON

*[Signature]*  
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NANCY POPE SCHLANGEN, Chair

*[Signature]*  
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ROBERT L. NIPPER, Commissioner

*[Signature]*  
\_\_\_\_\_  
LINDA L. SWEARINGEN, Commissioner

ATTEST:

*[Signature]*  
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Recording Secretary

MICROFILMED  
JUL 01 1998

KEYPUNCHED  
JUN 25 1998

## EXHIBIT "A"

## 18.52.115. Extended operating hours.

Notwithstanding the limitations set forth in an approved site plan for surface mining or the limitation on hours of operation set forth in subsection 18.52.110(I) of this chapter, a special operating permit for extended hours of operations at a mining site may be approved when the Planning Director or Hearings Body finds that an applicant demonstrates that:

A. Project Necessity. Extended hours of operation are necessary to construct capital improvements and other specific public roadway improvements, including but not limited to road widening, paving, surfacing and realigning, where practical difficulties not created by the applicant such as transportation management requirements necessitate project construction outside the hours specified in subsection 18.52.110(I) of this chapter or otherwise set forth in a surface mining site plan;

B. Equipment Limitation. During the extended hours of activity, operations at the mining site shall include only those uses allowed under section 18.52.040 of this chapter and, when already approved as a conditional use, those uses listed in section 18.52.050 of this chapter, including vehicular traffic, and shall be limited to the minimum necessary to complete the project; and

C. Time Limitation. Activities approved under subsection (B) of this section shall not exceed a period of 14 days but may be renewed for successive periods not exceeding three days each if: the extension is necessary to complete the roadway or capital improvement project; and transportation management concerns or unique project characteristics justify the extension.

D. Noise Control. Activities permitted under this section are subject to subsection 8.08.090(D) of chapter 8.08 of the Deschutes County Code. (Ord. 98-038 § 1, 1998)

**MEMORANDUM**

**DATE:** June 2, 1998  
**TO:** Board of County Commissioners  
**FROM:** Barbara Rich, Planning Staff  
**RE:** TA-98-10, Extended Hours of Operation in Surface Mining Zone

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Hap Taylor & Sons, Inc., has submitted an application for a text amendment to Title 18 to allow extended hours of operation for mining activities when necessary to complete public works projects, such as highway road construction. Nighttime construction is often required on roadway projects, requiring hot asphalt preparation and delivery from a mining site outside the standard operating hours at mining sites. The amendment as drafted by staff following discussions with legal counsel and the Planning Commission is attached. The applicant anticipates working on a construction project on Highway 20, northwest of Sisters, as early as the second half of June.

Summary of Proposed Text Amendment

The proposed amendment will allow equipment to be operated at permitted mining sites for extended hours, i.e., "outside" the general operating hours allowed in the SM zone or hours specified in an existing site plan. Extended operating hours would only be allowed when a public roadway improvement project is identified and traffic concerns dictate that nighttime work must occur.

For example, an operator meeting these provisions could prepare hot asphalt in a batch plant at a mining site where an asphalt batch plant is already permitted and deliver it to a construction area for paving at night. Extended operations require a special operating permit. An applicant must demonstrate that: 1) the project necessitates nighttime work, 2) only the minimal equipment required will be operated during the nighttime, and 3) equipment will be operated for as little time as necessary on both a daily basis and for the overall duration of the project.

Reasons Justifying Proposed Amendment

Due to high traffic volumes, ODOT frequently requires contractors to work on road construction projects at night (or 24 hours/day) to minimize adverse impacts to motorists that occur due to lane closures. These projects cannot be conducted during winter when traffic volumes might be lower because temperatures are too low to meet construction specifications. Roadway construction and maintenance projects are of obvious benefit to the general public and the overall duration of these projects is less when nighttime construction activity occurs. The overall duration of most projects of this nature is one to two weeks.

## EXHIBIT "B"

Extended hours of operation will result in additional nighttime noise at a mining site due to equipment and additional truck traffic. However, given the overall transportation needs of the public, the occasional operation of minimal equipment at mining sites, is necessary to complete roadway projects in a timely manner.

Planning Commission discussion

The Planning Commission met on May 28<sup>th</sup> to discuss this issue. The vote on the recommendation to the Board resulted in a 2-2 split. Comments and suggestions generated during the discussion included:

- The balance achieved during the 200+ hours of Planning Commission hearings and 80+ hours of County Commissioner hearings on surface mining in the county will be negated.
- The county made promises to the public regarding the scope of surface mining activities and these promises are embodied in the criteria contained in the Surface Mining zoning code, including hours of operation
- If the impacts of overnight or extended hours of operation were examined through an ESEE process, the concerns could be addressed because that is a public process and approval is not granted "wholesale."
- The occasional overnight operation is reasonable, but how can the county put a limit on the amount of overnight operation that occurs on any given site during a given paving season?

Staff Recommendation

Given both the Planning Commission's concerns about length of work and circumventing the public process embodied in the site specific ESEE analyses for each site and the Surface Mining Zone code itself staff proposes a specific maximum limit on the special operating permit that can be obtained through this text amendment. Staff has recommended a two-week duration for the operating permit because most paving projects appear to need something less than that for completion. If a mine operator wishes to pursue more frequent or more extensive overnight operations, the operator/owner has the opportunity with the proposed language to pursue a plan amendment and follow the Goal 5 process to examine and balance the impacts on the uses that may conflict with a longer period of extended operating hours.

The applicant has recommended language for the text amendment that would classify all roadway improvement projects requiring extended hours of operation as "emergencies." The Planning Commission and county staff do not agree that these types of projects can be classified as emergencies because the road agency responsible for the project (typically ODOT or County Road Department) has scheduled these projects months or years in advance as routine maintenance to existing roadways. These paving projects typically are not the result of landslides, road washouts, or bridge collapses, circumstances that any reasonable person would consider an emergency. Chapter 8.08, Noise Control, provides three avenues for activities that create noise outside of normal operating hours: 1) the applicant can show that the activity will not create "unreasonably loud or raucous noise" as defined in section 8.08.060, 2) the applicant can apply under section 8.08.090(D) in the event of a true emergency, or 3) apply for a variance under section 8.08.100 for all other circumstances. Subsection 18.52.115 has been written to allow the applicant to apply for the special operating permit for one of the three options described above depending on the specific circumstances of the work required.