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**PUBLIC NOTICE
TOWN OF CHARLESTOWN**

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Notice is hereby given that the Town Council of the Town of Charlestown will conduct a public hearing, open to the public, on March 10, 2014 at 7:00 p.m. at the Charlestown Town Hall, 4540 South County Trail on the following proposed amendment to the Code of Ordinances. Opportunity shall be given to all persons interested to be heard upon the matter of the proposed ordinance. The following proposed amendments are under consideration and may be adopted and/or altered or amended prior to the close of the public hearing without further advertising, as a result of further study or because of the views expressed at the public hearing. Any alteration or amendment must be presented for comment in the course of the public hearing. The proposed amendments are available for review and/or purchase at the Town Clerk's Office between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding Holidays.

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**ORDINANCE NO. 364
AN ORDINANCE AMENDING CHAPTER 155**

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Section 1. The Town Council of the Town of Charlestown hereby ordains that Chapter 155 of the Code of Ordinances, Town of Charlestown entitled Nuisances, is amended by adding an Article IV, as follows:

Article IV: Extraction Operations Licensing

§155-25. Purpose.

The purpose of this ordinance is to protect the environment, and the health, safety and welfare of the public by regulating operations involving the removal or mining of earth, sand, gravel and stone for commercial purposes. The requirements set forth in this ordinance are intended to prevent or minimize adverse impacts during operation, and to ensure proper restoration of affected sites upon the completion of extraction operations.

§155-26. Applicability.

New extractive industries are a prohibited use in the Town of Charlestown per §218-38.B.15 of the Town of Charlestown Zoning Ordinance. Any extraction operation operating legally in the Town prior to the effective date of this prohibition nonetheless shall be subject to the requirements of this ordinance.

1 §155-27. Definition.

2
3 An extraction operation, as regulated by this ordinance, encompasses all of the following
4 activities:

5
6 a. Mining, quarrying, and the commercial extraction of loam, sand, gravel, stone or other earth
7 materials;

8
9 b. Storage, stockpiling, distribution, and sale of extracted earth material; and

10
11 c. Installation and/or operation of equipment for crushing and processing procedures such as
12 screening, sorting, washing, conveyance and loading.

13
14 No part of an extraction operation shall include blasting of ledge or any other use of explosive
15 material.

16
17 §155-28. Exempt Activities.

18
19 Extraction resulting from the following activities shall be exempt from the provisions of this
20 ordinance provided that the extraction operation is clearly incidental to and in furtherance of any
21 of the following activities:

22
23 a. The construction of a building for which a building permit has been issued;

24
25 b. The construction of a roadway; or

26
27 c. A subdivision in accordance with a plat plan or plans approved by the Charlestown Planning
28 Commission.

29
30 §155-29. Temporary License Required.

31
32 Upon passage of this ordinance, any person, association, corporation and or company
33 (hereinafter individually and collectively referred to as "Entity") operating an extraction
34 operation in the Town of Charlestown shall be required to obtain a temporary license from the
35 Building and Zoning Department. The application for a temporary extraction license shall be
36 submitted no later than three (3) months after the effective date of this ordinance. The
37 application shall be submitted to the Building Official on a form provided by the Building and
38 Zoning Department, and include the date of the initiation of extraction operations, and submittal
39 of copies of all necessary permits required under any other state or federal law or regulation.

40
41 Within three (3) months after receipt of the application, the Building Official shall issue a
42 temporary extraction license, but only upon determining that the extraction operation is a legal
43 non-conforming use. The temporary license shall be effective for a period of eighteen (18)
44 months from the date of its issuance.

1 Any Entity desiring to continue an extraction operation beyond the date of expiration of a
2 temporary license shall apply for a full license under the provisions of §155-30. Operating an
3 extraction operation upon expiration of the temporary license and before issuance of a full
4 license shall be a violation of this ordinance and subject, but not limited to, the enforcement
5 provisions of §155-37.

6
7 §155-30. License Application Procedures.

8
9 Prior to the expiration of the temporary license, the owner or operator of the extraction operation
10 must receive a full extraction license from the Charlestown Town Council. A full license is
11 granted according to the following procedures:

- 12
13 a. A holder of a temporary license shall submit an application to the Building and Zoning
14 Department. The Building Official shall determine if the application is complete within
15 thirty (30) days of its receipt. If an application is found to be incomplete, the Building
16 Official shall have another thirty (30) days to review a revised application. Upon acceptance
17 of a complete application, the Building Official shall forward it to the Planning Commission
18 for site plan review.
- 19
20 b. The Planning Commission shall undertake review of the application materials and
21 accompanying site plan, and conduct a public hearing under the provisions of Article XII
22 Development Plan Review and Land Development Review of Chapter 218 Zoning. The
23 Planning Commission shall have sixty (60) days from the time the Building Official accepts
24 the application as complete to recommend approval, approval with conditions or denial of the
25 extraction operation site plan and accompanying application materials. The review of the
26 Planning Commission is not an appealable action. The Planning Commission shall forward
27 the application to the Town Council upon completion of the site plan review, along with their
28 recommendation to approve, approve with conditions or deny the site plan.
- 29
30 c. Following receipt of the application and the Planning Commission's review of the site plan,
31 the Charlestown Town Council shall hold a public hearing to review the application for a full
32 extraction license and to accept public comment. The Town Council shall have ninety (90)
33 days from the time the Planning Commission forwards the application to render a decision on
34 the license application. The Town Council may grant the license, approve it subject to
35 conditions, or deny it.
- 36
37 d. The granting of a full extraction license by the Town Council shall be conditioned upon
38 completion of all requirements of the site plan as approved by the Town Council, which site
39 plan shall constitute a condition of the license to operate. The Building Official, in
40 conjunction with the Town Planner, shall review the site and determine that all conditions of
41 the license, including any site plan requirements, are in place prior to issuing the license.
- 42
43 e. No extraction operation shall remain active without a license granted by the Town Council of
44 the Town of Charlestown under the provisions of this ordinance. Upon the granting of a full
45 extraction license, the operation shall be subject to the standards for operations and the
46 regulations for closure described in §155-33 and §155-34.

1 §155-31. Extension of Temporary License.

2
3 The Town Council may approve the extension of a temporary extraction license for any applicant
4 who is undergoing, in good faith, the application process for a full extraction license, or has
5 received a conditional extraction license subject to completion of all requirements of a site plan.
6 The extension may be granted for a single period not to exceed six (6) months.

7
8 §155-32. License Application Requirements.

9
10 An application for a full extraction license shall include the items listed below:

- 11
12 a. Site plan. A site plan or plans prepared by a professional engineer or registered land
13 surveyor, drawn to a scale of one inch equals 100 feet and showing accurately the following:
14
15 1. The entire premises owned and the limits of the land area identified for extraction
16 operations, and within that limit, the areas of current and proposed excavation activity for
17 which the license is requested.
18
19 2. Locations and dimensions of all permanent buildings, structures and equipment.
20
21 3. Ingress to and egress from the license area, and all fences and other enclosures.
22
23 4. Existing land contours at a vertical contour level of not more than two (2) feet within the
24 license area, and of not more than ten (10) feet within two hundred (200) feet in all
25 directions therefrom.
26
27 5. Proposed land contours at a vertical contour level of not more than two (2) feet within the
28 license area.
29
30 6. The location and elevation of a permanent point or benchmark outside of the disturbance
31 area for the duration of the license.
32
33 7. All water bodies and wetlands within two hundred (200) feet of the premises owned.
34
35 8. Certification of maximum groundwater elevation during the wet season as defined by the
36 RI Department of Environmental Management, documented by test well results prepared
37 by a professional engineer or registered land surveyor. Such testing shall be performed
38 throughout the license area.
39
40 9. Existing drainage and proposed stormwater management plan, prepared by a professional
41 engineer and meeting the standards of the Rhode Island Stormwater Manual.
42
43 10. Areas designated for the stockpiling of topsoil removed from the site to be used for later
44 reclamation purposes.
45
46 11. The location of any proposed burial areas for boulders.

- 1
2 b. Equipment and machinery. The number and type of equipment and/or machinery used in the
3 extraction operation, both mobile and permanently sited on the parcel, shall be provided.
4 Such equipment must be for use on that parcel, and only for the duration of the extraction
5 operations. A list of such permanent equipment shall be submitted to the Charlestown Tax
6 Assessor and updated on an annual basis.
7
8 c. Phasing plan. The time period of productivity for the extraction operation in its entirety shall
9 be submitted, along with a site map showing the proposed areas for phased operations.
10
11 d. Fee. An initial application fee of \$500 shall be required for the processing of an application
12 for a full extraction license, with a total fee of \$100 per acre, minus the \$500 application fee,
13 required prior to the issuance of the license. The total acreage shall be that which includes
14 areas previously mined but not restored, areas currently being mined and areas identified for
15 expansion for the duration of the license period. In no case shall the initial license
16 application fee be less than \$500.00.
17

18 §155-33. Standards for Extraction Operations.
19

20 In order to protect the environment and the health, safety and welfare of the public, the following
21 operational standards shall apply:
22

- 23 a. Required buffers. No extraction operation shall be allowed to expand or undertake any
24 additional activities within one hundred and fifty (150) feet of any property or street line.
25 Any operation currently operating within this setback shall provide a minimum buffer of fifty
26 (50) feet of existing or planted vegetation from all adjoining property boundaries. In
27 addition, the Planning Commission may require that a fence, not less than six (6) feet in
28 height, be erected around the active license area, either along the property boundaries or
29 enclosing the area under current and proposed extraction activity.
30
31 b. Hours of operation. Operations shall only take place between the hours of 7:00 a.m. and 6:00
32 p.m., Monday through Friday, and on Saturdays from 8:00 a.m. to 12:00 p.m. No work shall
33 take place on Sunday and legal state and federal holidays. The Town Council may further
34 restrict these hours depending upon their findings of fact as conditions of any license
35 depending on each application and case.
36
37 c. Dust control. All roads used for vehicular ingress to or egress from any parcel upon which
38 extraction operations are conducted, and all regularly traveled roads within the license area
39 shall either be paved or have a regular application of stone or water to control dust. Such
40 applications shall be made at intervals and in amounts sufficient to prevent observable dust
41 from rising from the road surfaces, or at any such time as requested by the Building Official.
42
43 d. Drainage. A plan for adequate drainage shall be in place to ensure that ground and surface
44 waters and neighboring properties are not impacted. The Planning Commission must
45 approve the drainage plan as part of their review and approval of the application site plan.
46

1 e. Prevention of erosion or sedimentation. Adequate measures shall be taken to prevent erosion
2 or depositing of sediment upon surrounding land and streets or into any water body or
3 wetland as required by federal, state or local regulation.
4

5 f. Surety. Any Entity issued a full extraction license by the Town Council shall be required to
6 post surety in the amount set by the Town Council as a condition of the license issuance.
7 Surety may be in the form of cash, letter or credit or commercial grade performance bond.
8 The surety shall be set by the Town Council with the assistance of a qualified professional in
9 an amount sufficient to cover the cost of restoration, including materials and procedures, for
10 the areas of the parcel previously mined but not restored, areas currently being mined, and
11 areas identified for expansion for the duration of the license period.
12

13 The surety must be available for call on demand at any time during the period the license
14 remains in effect. Failure to post or keep the surety current and available shall constitute an
15 immediate loss and revocation of the extraction license without right to notice or hearing
16 prior to the revocation and loss of the license.
17

18 §155-34. Regulations for Closure. 19

20 All land subject to extraction operations shall be restored within one (1) year of cessation of all
21 operations. The anticipated date of cessation shall be included as part of any application for a
22 full extraction license. The following closure procedures and requirements shall apply:
23

24 a. Restoration plan. A plan for closure and restoration shall be a requirement for all extraction
25 operations licensed by the Town of Charlestown. The plan shall be submitted to the Building
26 Official no later than nine (9) months prior to the expected date of cessation. The plan shall
27 be reviewed by the Planning Commission according to the initial license application
28 procedures. The Planning Commission may approve the restoration plan, approve it with
29 conditions or deny the plan.
30

31 b. Restoration standards.
32

33 1. Within the licensed areas, ledge shall not be left exposed above the approved grade, and
34 all cleared trees, stumps and brush shall be removed from the restored parcel. Trees and
35 stumps are not permitted to be buried on site.
36

37 2. All final banks shall be graded to a slope no steeper than twenty-five percent (25%).
38

39 3. Following earth material removal, topsoil shall be spread to a depth of four (4) to six (6)
40 inches, followed by seeding of the area, as recommended by the Planning Commission.
41

42 4. Ground cover to be planted or applied upon completion of extraction operations must be
43 done in a manner to effectively control wind and water erosion.
44

45 c. Surety. Before approval of an extraction operation closure and restoration plan, the Town
46 Council shall require that the Entity file surety in the form of a performance bond, deposit of

1 money, or other method of surety, as specified by the Town Council. The amount of the
2 surety shall be set by the Town Council with the assistance of a qualified professional in an
3 amount sufficient to cover the cost of all restoration materials and procedures.
4

- 5 1. Notice of default on performance secured by surety. If the Building Official finds that
6 default has occurred in the performance of any terms or conditions of the extraction
7 license, or in the implementation measures secured by the surety, a written notice shall be
8 made to the owner and bond holder. The notice shall state the nature of the default, the
9 work to be done, estimated cost and the period of time deemed by the Building Official to
10 be reasonably necessary for the completion of the work. Failure of the Entity to
11 acknowledge and comply with the provisions and deadlines outlined in such notice of
12 default shall, without further notice or proceedings whatsoever, release in forfeiture of the
13 surety and immediate revocation and loss of the extraction license.
14
- 15 2. Release from surety obligations. The surety requirement shall remain in full force and
16 effect for twelve (12) months following completion of any restoration plan, or longer if
17 deemed necessary by the Building Official or his designee. Release of the surety shall
18 only be followed by a vote of approval by the Town Council, along with an advisory
19 opinion from the Planning Commission.
20
- 21 3. Phasing. An owner of an extraction operation may elect to restore the parcel in phases
22 prior to cessation of all activities in order to reduce the amount of the final closure and
23 restoration plan performance bond. In such instances, the Planning Commission shall
24 review and approve the phased restoration plan. Failure of the owner to receive said
25 approval may result in the filing of a bond at an amount to cover the cost of restoring the
26 entire land area subject to the extraction license.
27

28 §155-35. License Renewal and Fees.

29
30 The Charlestown Town Council shall issue a full extraction license for a period not to exceed
31 three (3) years. Prior to the expiration of the license, or in the event that the area covered under
32 the license has been fully excavated, any Entity desiring to continue operation of an extractive
33 operation must receive a renewal license from the Town Council. A renewal is granted
34 according to the following procedures:
35

- 36 a. The license holder shall submit a renewal application to the Building and Zoning
37 Department. The Building Official shall process the application according to the initial
38 license application procedures. Upon acceptance of a complete application, the Building
39 Official shall forward it to the Town Planner.
40
- 41 b. Following receipt of a complete application, the Town Planner shall review it and determine,
42 in consultation with the Building Official, if there are any substantive issues or changes to the
43 parcel and/or the extraction operations for which site plan review and approval is required by
44 the Planning Commission. Following completion of review and approval of the updated site
45 plan by the Town Planner or the Planning Commission, the renewal application shall be
46 forwarded to the Town Council.

- 1
2 c. Following receipt of the approved site plan, the Town Council shall hold a public hearing to
3 review the renewal application and to accept public comment according to the initial
4 application procedures. The Town Council shall have ninety (90) days from the time the
5 Building Official accepts the renewal application to render a decision.
6
7 d. An application fee of \$100.00 per acre shall be required for the processing of an application
8 for renewal of a full extraction license. The acreage shall include only those areas identified
9 for expansion for the duration of the next license period and for which an application fee has
10 not yet been paid.
11
12 e. Renewed surety. As part of the full license renewal, the surety amount shall be reviewed and
13 renewed, in an amount set according to the original application procedures.
14

15 §155-36. Restrictions.
16

- 17 a. An extraction license granted under the provisions of this ordinance shall not run with the
18 parcel subject to the extraction operations. Any conveyance of said parcel shall require an
19 application to transfer the license to the succeeding owner, if extraction operations are to be
20 continued upon any part of the parcel. The completion of site restoration according to the
21 approved closure and restoration plan must be done prior to the sale of the parcel or for the
22 transfer or change of ownership of the extraction operation. Stock transfers and/or sales are
23 not exempt from this requirement.
24
25 b. Any extraction license granted under the provisions of this ordinance shall be limited to the
26 boundaries of the original plan for which the license was granted (the limits of the land area
27 identified for extraction operations). Expansion beyond the original site plan boundaries
28 requires a new application.
29

30 §155-37. Enforcement.
31

32 This article shall be enforced by the Charlestown Building Official, or his agent, who shall be
33 responsible for all on-site inspections relative to the approved site plan and any other conditions
34 of the extraction license, relative to the approved closure and restoration plan, and in response to
35 complaints.
36

- 37 a. Failure of license holder to complete plan requirements. If the holder of an extraction license
38 fails to complete or maintain the site plan requirements contained in the approved
39 application, or to complete closure or restoration plan requirements, then, in addition to
40 action against the license holder's surety and any other legal remedies, the Town is
41 authorized and empowered to undertake and complete such plan requirements. In the event
42 of such undertaking by the Town, the owner of the extraction operation or the parcel upon
43 which the operations take place, shall reimburse the Town for its necessary expenses in
44 connection therewith and such expenses shall constitute a lien upon the entire tract of land of
45 which any portion has been specified in an approved extraction license application.
46

1 b. Revocation and hearing. Any Entity receiving an extraction license in accordance with this
2 ordinance who is alleged to fail to meet any demand for corrective or remedial action issued
3 by the Building Official or who is determined to have violated any conditions set forth in
4 such license, shall be subject to immediate loss and revocation of the license, and forfeiture
5 of any surety, without any further opportunity for notice or hearing. The Town Council,
6 upon petition or on its own motion, may conduct a show-cause hearing on any alleged
7 violation of any of the provisions of this ordinance, after reasonable notice to the licensee and
8 providing the licensee an opportunity to address the Town Council on the matter, to
9 determine whether to revoke a license issued under this ordinance.

10
11 c. Fines. In addition to any provisions for termination or forfeiture in this ordinance, any
12 person found guilty of violating this ordinance, including operating an extraction operation
13 without a valid extraction license, either temporary or full, shall be subject to a fine of five
14 hundred (\$500.00) dollars per acre, per day, for each day such person shall be in violation of
15 this ordinance.

16
17
18 **Section 2.** The Town Clerk is hereby authorized to cause said changes to be made to Chapter
19 155 of the Town of Charlestown's Code of Ordinances.

20
21
22 **Section 3.** This ordinance shall take effect immediately upon passage.

23
24
25 Attested To By:

Passed By Town Council On:

26
27 _____
28 Amy Rose Weinreich, CMC Town Clerk

Advertised in the Westerly Sun: February 28, 2014

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PUBLIC NOTICE
TOWN OF CHARLESTOWN

Notice is hereby given that the Town Council of the Town of Charlestown conducted a public hearing, open to the public, on March 10, 2014 at 7:00 p.m. at the Charlestown Town Hall, 4540 South County Trail on the following proposed amendment to the Code of Ordinances. This public hearing has been continued to April 14, 2014 at 7:00 p.m. at the Charlestown Town Hall, 4540 South County Trail. Opportunity shall be given to all persons interested to be heard upon the matter of the proposed ordinance. The following proposed amendments are under consideration and may be adopted and/or altered or amended prior to the close of the public hearing without further advertising, as a result of further study or because of the views expressed at the public hearing. Any alteration or amendment must be presented for comment in the course of the public hearing. The proposed amendments are available for review and/or purchase at the Town Clerk's Office between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding Holidays.

ORDINANCE NO. 364
AN ORDINANCE AMENDING CHAPTER 155

AS AMENDED FOR CONTINUED PUBLIC HEARING ON APRIL 14, 2014

NOTE: Underline is original ordinance proposal; ~~strikeout~~ is removed from original ordinance proposal; and, double underline is revisions to original ordinance proposal.

Section 1. The Town Council of the Town of Charlestown hereby ordains that Chapter 155 of the Code of Ordinances, Town of Charlestown entitled Nuisances, is amended by adding an Article IV, as follows:

Article IV: Excavation Operations Licensing

§155-25. Purpose.

The purpose of this ordinance is to protect the environment, and the health, safety and welfare of the public by regulating operations involving the removal or mining of earth, sand, gravel and stone for commercial purposes. The requirements set forth in this ordinance are intended to prevent or minimize adverse impacts during operation, and to ensure proper restoration of affected sites upon the completion of excavation operations.

§155-26. Applicability.

New extractive industries are a prohibited use in the Town of Charlestown per §218-38.B.15 of the Town of Charlestown Zoning Ordinance. ~~Any~~ Every excavation operation operating legally in the Town prior to the effective date of this prohibition nonetheless shall be subject to the requirements of this ordinance.

1 §155-27. Definition.

2
3 An excavation operation, as regulated by this ordinance, encompasses all of the following
4 activities:

5
6 a. Mining, quarrying, and the commercial excavation of loam, sand, gravel, stone, including but
7 not limited to rock and/or granite, or other earth materials from any tract of land;

8
9 b. Storage, stockpiling, distribution, and sale of extracted earth material; and

10
11 c. Installation and/or operation of equipment for crushing and processing procedures such as
12 screening, sorting, washing, conveyance and loading.

13
14 ~~No part of an excavation operation shall include blasting of ledge or any other use of explosive~~
15 ~~material.~~

16
17 §155-28. Exempt Activities.

18
19 Excavation resulting from the following activities shall be exempt from the provisions of this
20 ordinance provided that the excavation operation is clearly incidental to and in furtherance of any
21 of the following activities:

22
23 a. The construction of a building for which a building permit has been issued;

24
25 b. The construction of a roadway; or

26
27 c. A subdivision in accordance with a plat plan or plans approved by the Charlestown Planning
28 Commission; or

29
30 d. Landscaping and/or nursery operations selling products to consumers at retail.

31
32 §155-29. Temporary License Required.

33
34 Upon passage of this ordinance, any person, association, corporation and/or company
35 (hereinafter individually and collectively referred to as "Entity") operating an excavation
36 operation in the Town of Charlestown shall be required to obtain an temporary excavation
37 license from the Charlestown Town Council Building and Zoning Department. The application
38 for an temporary excavation license shall be submitted no later than three (3) one (1) months
39 after the effective date of this ordinance. The application shall be submitted to the Building
40 Official Town Clerk on a form provided by the Town Clerk's office Building and Zoning
41 Department, and include the date of the initiation of excavation operations, and submittal of
42 copies of all necessary permits required under any other state or federal law or regulation.

43
44 ~~Within three (3) months after receipt of the application, the Building Official shall issue a~~
45 ~~temporary excavation license, but only upon determining that the excavation operation is a legal~~

1 ~~non-conforming use. The temporary license shall be effective for a period of eighteen (18)~~
2 ~~months from the date of its issuance.~~

3
4 ~~Any Entity desiring to continue an excavation operation beyond the date of expiration of a~~
5 ~~temporary license shall apply for a full license under the provisions of §155-30. Operating an~~
6 ~~excavation operation upon expiration of the temporary license and before issuance of a full~~
7 ~~license shall be a violation of this ordinance and subject, but not limited to, the enforcement~~
8 ~~provisions of §155-37.~~

9
10 §155-30. License Application Procedures and Requirements.

11
12 ~~Prior to the expiration of the temporary license, the owner or operator of the excavation~~
13 ~~operation must receive a full excavation license from the Charlestown Town Council. An full~~
14 ~~excavation license is may be granted by the Town Council according to the following procedures~~
15 ~~and submission requirements:~~

- 16
17 a. ~~An operator of an extraction operation holder of a temporary license shall submit an~~
18 ~~application for an excavation license to the Town Clerk's office Building and Zoning~~
19 ~~Department. The Building Official Town Clerk's office shall determine if the whether an~~
20 ~~excavation license application is complete within thirty (30) days of its receipt. If an~~
21 ~~excavation license application is found to be incomplete, the Building Official Town Clerk's~~
22 ~~office shall notify the applicant and upon the filing of the incomplete information, the Town~~
23 ~~Clerk's office shall have another thirty (30) days to review a revised application. Upon~~
24 ~~acceptance of a complete application, the Building Official Town Clerk shall forward it to~~
25 ~~the Planning Commission for site plan Town Council for review and action.~~
26
27 b. ~~The Planning Commission shall undertake review of the application materials and~~
28 ~~accompanying site plan, and conduct a public hearing under the provisions of Article XII~~
29 ~~Development Plan Review and Land Development Review of Chapter 218 Zoning. The~~
30 ~~Planning Commission shall have sixty (60) days from the time the Building Official accepts~~
31 ~~the application as complete to recommend approval, approval with conditions or denial of the~~
32 ~~excavation operation site plan and accompanying application materials. The review of the~~
33 ~~Planning Commission is not an appealable action. The Planning Commission shall forward~~
34 ~~the application to the Town Council upon completion of the site plan review, along with their~~
35 ~~recommendation to approve, approve with conditions or deny the site plan.~~
36
37 b. ~~Following receipt of the an excavation license application and the Planning Commission's~~
38 ~~review of the site plan, the Charlestown Town Council shall hold a public hearing to review~~
39 ~~the application for an full extraction excavation license and to accept public comment. The~~
40 ~~Town Council shall have ninety (90) days from the time may refer an excavation license~~
41 ~~application to the Planning Commission forwards the application to render a decision for an~~
42 ~~advisory opinion on the license application. The Town Council may grant the license,~~
43 ~~approve it subject to conditions, or deny it.~~
44
45 c. ~~The granting of an full excavation license by the Town Council shall be conditioned upon~~
46 ~~completion of all requirements of the site plan as approved by the Town Council, which site~~

1 plan requirements and/or conditions shall constitute a condition of the license to operate.
2 The Building Official, in conjunction with the Town Planner, shall review may inspect
3 and/or observe the site and determine that all conditions of the license, including any site
4 plan requirements, are in place prior to issuing the excavation license. Such conditions of a
5 license may include, but are not limited to, hours of operation, buffer areas and maintenance
6 of same, blasting limitations and notification requirements, security and safety provisions,
7 third party compliance inspection, and externalities regulations, to name a few.

- 8
9 d. No excavation operation shall remain active without a license granted by the Town Council
10 of the Town of Charlestown under the provisions of this ordinance. Upon the granting of an
11 full excavation license, the operation shall be subject to the standards for operations and the
12 regulations for closure described in §155-33 and §155-34.

13
14 §155-31. Extension of Temporary License.

15
16 The Town Council may approve the extension of a temporary excavation license for any
17 applicant who is undergoing, in good faith, the application process for a full excavation license,
18 or has received a conditional excavation license subject to completion of all requirements of a
19 site plan. The extension may be granted for a single period not to exceed six (6) months.

20
21 §155-312. License Application Requirements.

22
23 An application for an full-extraction excavation license shall include the items listed below:

- 24
25 a. Site plan. A site plan or plans prepared by a professional engineer or registered land
26 surveyor, drawn to a scale of one inch equals 100 feet and showing accurately the following:

- 27
28 1. The entire premises owned and the limits of the land area identified for excavation
29 operations, and within that limit, the areas of current and proposed excavation activity for
30 which the license is requested.
31
32 2. Locations and dimensions of all permanent buildings, structures and equipment.
33
34 3. Ingress to and egress from the license area, and all fences and other enclosures.
35
36 4. Existing land contours at a vertical contour level of not more than two (2) feet within the
37 license area, and of not more than ten (10) feet within two hundred (200) feet in all
38 directions therefrom.
39
40 5. Proposed land contours at a vertical contour level of not more than two (2) feet within the
41 license area.
42
43 6. The location and elevation of a permanent point or benchmark outside of the disturbance
44 area for the duration of the license.
45
46 7. All water bodies and wetlands within two hundred (200) feet of the premises owned.

- 1
2 8. Certification of maximum groundwater elevation during the wet season as defined by the
3 RI Department of Environmental Management, documented by test well results prepared
4 by a professional engineer or registered land surveyor. Such testing shall be performed
5 throughout the license area.
6
7 9. Existing drainage and proposed stormwater management plan, prepared by a professional
8 engineer and meeting the standards of the Rhode Island Stormwater Manual.
9
10 10. Areas designated for the stockpiling of topsoil removed from the site to be used for later
11 reclamation purposes.
12
13 11. The location of any proposed burial areas for boulders and or other material.
14
15 b. Equipment and machinery. The number and type of equipment and/or machinery used in the
16 excavation operation, both mobile and permanently sited on the parcel, shall be provided.
17 Such equipment must be for use on that parcel, and only for the duration of the excavation
18 operations. A list of such permanent equipment shall be submitted to the Charlestown Tax
19 Assessor and updated on an annual basis.
20
21 c. Phasing plan. The time period of productivity for the excavation operation in its entirety
22 shall be submitted, along with a site map showing the proposed areas for phased operations.
23
24 d. Fee. An initial application fee of \$500 shall be required for the processing of an application
25 for an ~~full-extraction~~ excavation license, with a total fee of \$100 per acre, minus the \$500
26 application fee, required prior to the issuance of the license. The total acreage shall be that
27 which includes areas previously mined but not restored, areas currently being mined and
28 areas identified for expansion for the duration of the license period. In no case shall the
29 initial license application fee be less than \$500.00. A license renewal fee shall be \$100 per
30 acre.
31
32 e. Applicant. Every application shall designate an individual who shall be the licensee and
33 designated as the person responsible to conduct the licensed activity pursuant to the
34 provisions of this ordinance and any terms and conditions of approval to receive the license.
35 The named individual must submit to a background check and be determined a person of
36 suitable character to operate the licensed facility. Applicants must be citizens who are
37 residents of this state. The Town Council may deny applications of persons to be the named
38 applicant on any license issued pursuant to this ordinance who has or had any criminal
39 record, or who have charges and/or records of repeated violations of any regulatory licensing
40 statute, ordinance and/or regulation.
41

42 §155-323. Standards for Excavation Operations.
43

44 In order to protect the environment and the health, safety and welfare of the public, the following
45 operational standards shall apply:
46

- 1 a. Required buffers. No excavation operation shall be allowed to expand or undertake any
2 additional activities within one hundred and fifty (150) feet of any property or street line.
3 Any operation currently operating within this setback shall provide a minimum buffer of fifty
4 (50) feet of existing or planted vegetation from in such a location and/or proximity to all
5 adjoining property boundaries which are determined by the Town Council during the course
6 of the licensing process to unreasonably interfere with the use and/or enjoyment of such
7 adjoining properties. In addition, the Planning Commission Town Council may require that
8 an adequate buffer, which may be vegetation or a fence, not less than six (6) feet in height, be
9 erected around the active license area, either along the property boundaries or enclosing the
10 area under current and proposed excavation activity. Any required buffer shall be
11 appropriately maintained by the licensee as a continuing obligation of the license.
- 12
- 13 b. Hours of operation. Operations shall only take place between the hours of 7:030 a.m. and
14 65:00 p.m., Monday through Friday, and on Saturdays from 8:030 a.m. to 12:00 p.m. No
15 work shall take place on Sunday and legal state and/or federal holidays. The Town Council
16 may further restrict these hours depending upon their findings of fact as conditions of any
17 license depending on each application and case.
- 18
- 19 c. Dust control. All roads used for vehicular ingress to or egress from any parcel upon which
20 excavation operations are conducted, and all regularly traveled roads within the license area
21 shall either be paved or have a regular application of stone or water to control dust. Such
22 applications shall be made at intervals and in amounts sufficient to prevent observable dust
23 from rising from the road surfaces, or at any such time as requested by the Building Official.
24 In addition, no fugitive dust may be emitted from the site during the course of excavation
25 operations and/or from material stockpiles.
- 26
- 27 d. Drainage. A plan for adequate drainage shall be in place to ensure that ground and surface
28 waters and neighboring properties are not impacted. The Planning Commission Town
29 Council must approve the drainage plan as part of their review and approval of the
30 application site plan. Water testing may be ordered by the Building Official in cases where,
31 under the totality of the circumstances, water contamination is suspected by operations of the
32 licensed activity. The licensee shall be responsible for the cost of any water sample collection
33 and testing ordered under this provision. Results of water tests can be used by the Building
34 Official to issue appropriate remedial actions.
- 35
- 36 e. Prevention of erosion or sedimentation. Adequate measures shall be taken to prevent erosion
37 or depositing of sediment upon surrounding land and streets or into any water body or
38 wetland as required by federal, state or local regulation.
- 39
- 40 f. Surety. Any Entity issued an excavation ~~full excavation~~ license by the Town Council shall
41 be required to post surety in the amount set by the Town Council as a condition of the license
42 issuance. Surety may be in the form of cash, letter or credit or commercial grade
43 performance bond. The surety shall be set by the Town Council with the assistance of a
44 qualified professional in an amount sufficient to cover the cost of restoration, including
45 materials and procedures, for the areas of the parcel previously mined but not restored, areas

1 currently being mined, and areas identified for expansion for the duration of the license
2 period.

3
4 The surety must be available for call on demand at any time during the period the license
5 remains in effect. Failure to post or keep the surety current and available shall constitute an
6 immediate loss and revocation of the excavation license without right to notice or hearing
7 prior to the revocation and loss of the license.

8
9 §155-334. Regulations for Closure.

10
11 All land subject to excavation operations shall be restored pursuant to the terms and conditions
12 for restoration established by the Town Council as part of the licensing process within one (1)
13 year of cessation of all operations. The anticipated date of cessation shall be included as part of
14 any application for a full excavation license. The following closure procedures and requirements
15 shall apply:

16
17 a. Restoration plan. A plan for closure and restoration shall be a requirement for all excavation
18 operations licensed by the Town of Charlestown. The plan shall be submitted to the Town
19 Council as part of the license application Building Official no later than nine (9) months prior
20 to the expected date of cessation. The plan shall be reviewed by the Town Council, who may
21 seek an advisory opinion from the Planning Commission according to the initial license
22 application procedures. The Town Council Planning Commission may approve the
23 restoration plan, approve it with conditions or deny the plan.

24
25 b. Restoration standards.

26
27 1. Within the licensed areas, ledge shall not be left exposed above the approved grade, and
28 all cleared trees, stumps and brush shall be removed from the restored parcel. Trees and
29 stumps are not permitted to be buried on site.

30
31 2. All final banks shall be graded to a slope no steeper than twenty-five percent (25%).

32
33 3. Following earth material removal, topsoil shall be spread to a depth of four (4) to six (6)
34 inches, followed by seeding of the area, as recommended by the Planning Commission.
35 Any material brought to the site for fill and/or cover material for the closure plan shall be
36 subject to visual inspection by the Building Official and deemed appropriate and suitable
37 for the intended use. Any rejected material shall be removed from the site immediately by
38 the licensee and may not be stored or otherwise remain on the licensed premises.

39
40 4. Ground cover to be planted or applied upon completion of excavation operations must be
41 done in a manner to effectively control wind and water erosion.

42
43 c. Surety. Before approval of an excavation operation closure and restoration plan, the Town
44 Council shall require that the Entity file surety in the form of a performance bond, deposit of
45 money, or other method of surety, as specified by the Town Council. The amount of the

1 surety shall be set by the Town Council with the assistance of a qualified professional in an
2 amount sufficient to cover the cost of all restoration materials and procedures.
3

- 4 1. Notice of default on performance secured by surety. If the Town Council Building
5 Official finds that default has occurred in the performance of any terms or conditions of
6 the excavation license, or in the implementation measures secured by the surety, a written
7 notice shall be made to the owner and bond holder. The notice shall state the nature of
8 the default, the work to be done, estimated cost and the period of time deemed by the
9 Building Official Town Council to be reasonably necessary for the completion of the
10 work. Failure of the Entity to acknowledge and comply with the provisions and
11 deadlines outlined in such notice of default shall, without further notice or proceedings
12 whatsoever, release in forfeiture of the surety and immediate revocation and loss of the
13 excavation license.
14
- 15 2. Release from surety obligations. The surety requirement shall remain in full force and
16 effect as a condition of the issuance of the excavation license for twelve (12) months
17 following completion of any restoration plan, or longer if deemed necessary by the
18 Building Official or his designee. Release of the surety shall only be followed by a vote
19 of approval by the Town Council, along with an advisory opinion from the Planning
20 Commission.
21
- 22 3. Phasing. An owner of an excavation operation may elect to restore the parcel in phases
23 prior to cessation of all activities in order to reduce the amount of the final closure and
24 restoration plan performance bond. In such instances, the Town Council Planning
25 Commission shall review and approve the phased restoration plan. Failure of the owner
26 to receive said approval may result in the filing of a bond at an amount to cover the cost
27 of restoring the entire land area subject to the excavation license.
28

29 §155-345. License Renewal and Fees.
30

31 The Charlestown Town Council shall issue an excavation full excavation license for a period not
32 to exceed three (3) years. Prior to the expiration of the license, or in the event that the area
33 covered under the license has been fully excavated, any Entity desiring to continue operation of
34 an extractive operation must receive a renewal license from the Town Council. A renewal is
35 granted according to the following same procedures and requirements set forth in 155-31, herein
36 procedures:
37

- 38 a. The license holder shall submit a renewal application to the Building and Zoning
39 Department. The Building Official shall process the application according to the initial
40 license application procedures. Upon acceptance of a complete application, the Building
41 Official shall forward it to the Town Planner.
42
- 43 b. Following receipt of a complete application, the Town Planner shall review it and determine,
44 in consultation with the Building Official, if there are any substantive issues or changes to the
45 parcel and/or the excavation operations for which site plan review and approval is required
46 by the Planning Commission. Following completion of review and approval of the updated

1 ~~site plan by the Town Planner or the Planning Commission, the renewal application shall be~~
2 ~~forwarded to the Town Council.~~

3
4 ~~e. Following receipt of the approved site plan, the Town Council shall hold a public hearing to~~
5 ~~review the renewal application and to accept public comment according to the initial~~
6 ~~application procedures. The Town Council shall have ninety (90) days from the time the~~
7 ~~Building Official accepts the renewal application to render a decision.~~

8
9 ~~d. An application fee of \$100.00 per acre shall be required for the processing of an application~~
10 ~~for renewal of a full excavation license. The acreage shall include only those areas identified~~
11 ~~for expansion for the duration of the next license period and for which an application fee has~~
12 ~~not yet been paid.~~

13
14 ~~e. Renewed surety. As part of the full license renewal, the surety amount shall be reviewed and~~
15 ~~renewed, in an amount set according to the original application procedures.~~

16
17 §155-356. Restrictions.

18
19 a. An excavation excavation license granted under the provisions of this ordinance shall not run
20 with the parcel subject to the excavation operations. Any conveyance of said parcel shall
21 require an application to apply to the Town Council to transfer the license to the succeeding
22 owner, if excavation operations are to be continued upon any part of the parcel. The
23 completion of site restoration according to the approved closure and restoration plan must be
24 done prior to the sale of the parcel or for the transfer or change of ownership of the
25 excavation operation. Stock transfers and/or sales are not exempt from this requirement.

26
27 b. Any excavation excavation license granted under the provisions of this ordinance shall be
28 limited to the boundaries of the original plan for which the license was granted (the limits of
29 the land area identified for excavation operations). Expansion beyond the original site plan
30 boundaries requires a new and/or revised application.

31
32 §155-367. Enforcement.

33
34 This article shall be enforced by the Charlestown Building Official, or his agent, who shall be
35 responsible for all on-site inspections relative to the approved site plan and any other conditions
36 of the excavation excavation license, relative to the approved closure and restoration plan, and in
37 response to complaints.

38
39 a. Failure of license holder to complete plan requirements. If the holder of an excavation
40 license fails to complete or maintain the site plan requirements contained in the approved
41 application, or to complete closure or restoration plan requirements and/or other license
42 conditions and/or requirements, then, in addition to action against the license holder's surety
43 and any other legal remedies, the Town is authorized and empowered to undertake and
44 complete such plan requirements. In the event of such undertaking by the Town, the owner
45 of the excavation operation or the parcel upon which the operations take place, shall
46 reimburse the Town for its necessary expenses in connection therewith and such expenses

1 shall constitute a lien upon the entire tract of land of which any portion has been specified in
2 an approved excavation license application.

- 3
- 4 b. Revocation and hearing. Any Entity receiving an ~~extraction~~ excavation license in accordance
5 with this ordinance who is alleged to fail to meet any demand for corrective or remedial
6 action issued by the Building Official or who is determined to have violated any conditions
7 set forth in such license, shall be subject to immediate loss and revocation of the license, and
8 forfeiture of any surety, without any further opportunity for notice or hearing. The Town
9 Council, upon petition or on its own motion, may conduct a show-cause hearing on any
10 alleged violation of any of the provisions of this ordinance, after reasonable notice to the
11 licensee and providing the licensee an opportunity to address the Town Council on the
12 matter, to determine whether to revoke a license issued under this ordinance.
- 13
- 14 c. Fines. In addition to any provisions for termination or forfeiture in this ordinance, any
15 person found guilty of violating this ordinance, including operating an excavation operation
16 without a valid excavation license, ~~either temporary or full~~, shall be subject to a fine of five
17 hundred (\$500.00) dollars per acre, per day, for each day such person shall be in violation of
18 this ordinance.
- 19
- 20 d. Suit. The Town may, in lieu of or in addition to any other enforcement action, bring suit in
21 the superior court in the name of the Town to restrain any violation of or compel compliance
22 with the terms of this ordinance and/or the terms and conditions of the excavation license.
- 23
- 24 e. Appeals. Actions alleging a grievance from any enforcement action of the Building Official
25 against the licensee may be brought to the Town Council. If the licensee is not satisfied with
26 the action of the Town Council concerning a grievance they may take an action at law or in
27 equity in the same manner as appeals from the Town Council sitting as a licensing authority.
- 28
- 29

30 **Section 2.** The Town Clerk is hereby authorized to cause said changes to be made to Chapter
31 155 of the Town of Charlestown's Code of Ordinances.

32

33

34 **Section 3.** This ordinance shall take effect immediately upon passage.

35

36

37 Attested To By:

Passed By Town Council On:

38

39 _____

40 Amy Rose Weinreich, CMC Town Clerk

41

42

43

44 Advertised in the Westerly Sun: April 9, 2014