**Town of Pembroke, Maine
METALLIC MINERAL MINING ORDINANCE**

**ARTICLE I. GENERAL PROVISIONS**

**Section 1. Authority**

This ordinance is adopted and enacted pursuant to the Maine Constitution, Article VIII, Part Second, 30‑A M.R.S. § 2101 *et seq*. (Municipal Home Rule), 30-A M.R.S. §§ 3001-3006 (“Ordinance Power”), and 38 M.R.S. § 490-NN(3) (regulation of metallic mineral mining by local units of government). This ordinance shall be known as the “Town of Pembroke Metallic Mineral Mining Ordinance” and is referred to herein as “this Ordinance.” The Town of Pembroke is referred to herein as “the Town.”

**Section 2. Purposes**

The purposes of this Ordinance are:

1. To protect the quality and quantity of the Town’s groundwater, spring water, and water in aquifers and their recharge areas, as well as surface waters including lakes, ponds, wetlands, rivers, and streams;
2. To prohibit large-scale metallic mineral mining operations and establish an orderly review process and criteria for community-scale metallic mineral mining operations in order to ensure the sustainability and quality of groundwater, spring water, and surface waters; prevent the despoliation of healthy sources of water supply to the public; protect private and public properties from environmental pollution, noise impacts, and traffic impacts; protect public roadways from degradation; ensure the continuing stability and health of topsoil and surface lands, and preserve the rural character of the Town; and
3. To protect the health, safety, and welfare of the residents of and visitors to the Town.

**Section 3. Applicability**

1. Exempt Activities. The following activities are exempt from the requirements of this Ordinance:
	1. Exploration activities and excavations of sand, fill, gravel, clay, topsoil, peat, or silt that are not associated with metallic mineral mining operations.
2. Prohibited Activities. The following activities are prohibited by this Ordinance:
	1. Large-scale metallic mineral mining operations.
	2. Any activities prohibited by the Maine Metallic Mineral Mining Rules.
	3. Any exploration activities or mining activities that do not comply with the requirements of this Ordinance.
3. Permit Required. The following activities are subject to the requirements of this Ordinance:
	1. Community-scale metallic mineral mining operations.
4. Date of Applicability. Notwithstanding 1 M.R.S. § 302 or any other law to the contrary, and regardless of the effective date of this Ordinance, this Ordinance shall govern and apply to all proceedings and applications for community-scale metallic mineral mining operations and drill holes that were or are pending before the Code Enforcement Officer or the Planning Board on or any time after November 2, 2021.

**Section 4. Relation to Other Rules and Laws**

This Ordinance does not relieve a person of the obligation to comply with all other applicable state, federal, or local laws, rules, and ordinances, including the Maine Metallic Mineral Mining Rules.

**ARTICLE II. DEFINITIONS**

**Section 1. Definitions**

It is the legislative intent of the voters of the Town, in adopting this Ordinance, that all provisions of this Ordinance be liberally construed to protect and preserve the health, safety, and welfare of the inhabitants of the Town. In the construction of this Ordinance, the following definitions apply. In addition, the word “including” means “including, but not limited to.” References to Maine statutes and Maine state department or agency rules include any amendments and successor provisions.

1. Applicant: A person with sufficient right, title, or interest to submit an application for a permit or approval to a reviewing authority pursuant to this Ordinance, and includes any duly authorized designee or agent of the applicant.
2. Beneficiation: The treatment of ore to liberate or concentrate its valuable constituents. “Beneficiation” includes crushing, grinding, washing, dissolution, crystallization, filtration, sorting, sizing, drying, sintering, pelletizing, briquetting, calcining, roasting in preparation for leaching to produce a final or intermediate product that does not undergo further beneficiation or processing, gravity concentration, magnetic separation, electrostatic separation, flotation, ion exchange, solvent extraction, electrowinning, precipitation, amalgamation, and dump, vat, tank, and in situ leaching.
3. Bulk Sampling: The removal of samples for the purpose of testing to determine the feasibility, method, or manner of extraction or processing of metallic minerals. “Bulk sampling” includes drilling and boring, digging of shafts and tunnels, and digging of pits and trenches.
4. Exploration or Exploration Activity: Any bulk sampling or exploratory activity associated with a metallic mineral mining operation.
5. Maine Metallic Mineral Mining Rules: Title 38, Sections 490-LL *et seq.* of the Maine Revised Statutes Annotated,and the MDEP rules promulgated thereunder, including 96 C.M.R. Ch. 200.
6. MDEP: The Maine Department of Environmental Protection and any successor agency.
7. Metallic Mineral: Any ore or material to be excavated from the natural deposits on or in the earth for its metallic mineral content to be used for commercial or industrial purposes. “Metallic mineral” does not include ores of thorium or uranium.
8. Metallic Mineral Mining Operation: The extraction of metallic mineral for commercial sale, by any person or persons acting in concert, and any associated exploration activities. A metallic mineral mining operation is classified as “community-scale” (allowed with a permit, subject to the requirements of this Ordinance) or “large-scale” (prohibited) as follows:

|  |  |  |
| --- | --- | --- |
|  | Community-Scale  | Large-Scale |
| Extracted mine waste per calendar year (tons), regardless of number of extraction sources, sites, or facilities used | Less than 10,000 | 10,000 or more |
| Mining Area (acres) | Less than 3 | 3 or more |
| Exploration Activity—maximum total bulk sampling (tons) | Less than 10,000 | 10,000 or more |

1. Mine Waste: All material, including overburden, rock, ore, tailings, and other mining-related materials that in the process of mining and beneficiation has been exposed or removed from the earth during mining activities.
2. Mining, Mining Operation, or Mining Activity: Any activities, facilities, or processes necessary for the extraction or removal of metallic minerals or overburden or for the preparation, washing, cleaning or other treatment of metallic minerals. “Mining” includes the bulk sampling, exploration, extraction, or beneficiation of metallic minerals, as well as waste storage and other stockpiles and reclamation activities.
3. Mining Area: The aggregate land area devoted to mining and exploration activities, including: (i) land from which earth material is removed in connection with mining and exploration activities, (ii) land on which material from mining is stored or deposited, (iii) land on which beneficiating or treatment facilities (including groundwater and surface water management treatment systems) are located, and (iv) land on which water reservoirs used in a mining operation are located.
4. Ore: Rock containing sufficient metallic mineralization to process using technologies that exist at the mining operation.
5. Overburden: Soil, rock, or other materials which lie above or between the natural mineral deposits to be mined.
6. Person: An individual, firm, partnership, association, company, limited liability company, corporation, joint venture, municipality, governmental entity, or other legal entity.
7. Tailings: The product resulting from the milling and mineral concentration process remaining after extraction of minerals by physical or chemical means.

**ARTICLE III. ADMINISTRATIVE PROCEDURES AND REVIEW CRITERIA**

**Section 1. Administrative Procedures**

Before commencing any community-scale metallic mineral mining operation (including any associated exploration activities which remove 2,000 tons or more of bulk waste), a permit must be obtained from the Planning Board pursuant to the following procedures:

1. MDEP Approval.Before submitting an application to the Planning Board for a community-scale metallic mining operation, the applicant must secure an advanced exploration permit and, as applicable, a mining permit from the MDEP in accordance with the Maine Metallic Mineral Mining Rules.
2. Application; Notice.At least 30 days prior to the Planning Board meeting on which the applicant appears on the agenda, the applicant must submit to the Town six copies of an application prepared by a qualified professional. Concurrent with the filing of the application to the Planning Board, the applicant must notify, by certified USPS first class mail, return receipt requested, all owners of property located within 1,000 feet of any property line of the proposed operation. The notice must contain a brief description of the project and a map identifying the location of the proposed operation. The applicant must provide evidence of such notices to the Planning Board.
3. Submission Requirements. An application for a community-scale metallic mineral mining operation permit must contain the following materials, at minimum:
	1. Application and Escrow Fees.
		1. A nonrefundable application fee of $500, payable by check to the Town.
		2. An escrow fee of $1,500, which must be deposited by the Town in an escrow account designated for the application and used by the Town to pay for all expenses reasonably related to (i) the Planning Board’s review of the application, including publishing notices of public hearings and hiring independent consulting and legal services to review hydrogeologic or engineering reports and other technical and legal submissions associated with the application and to ensure compliance with this Ordinance, and (ii) if the application is approved, the inspection of the operation, review of records, and other administrative requirements. If the balance in the escrow account is drawn down by 75%, the Town shall notify the applicant and require that the balance be brought back up to the original deposit amount. The Town shall continue to notify the applicant and require a deposit as necessary whenever the balance of the escrow account is drawn down by 75% of the original deposit. Any balance in the escrow account remaining after a decision on the application by the Planning Board must be returned to the applicant, except for an amount reasonably calculated by the Code Enforcement Officer as necessary to cover the costs of the inspection, administrative review, and other requirements set forth in this Ordinance if the application is approved.
		3. If the applicant submits an amendment to a community-scale metallic mineral mining operation proposal at any time prior to the Planning Board’s issuance of a decision on the application, the amendment application materials must be accompanied by a nonrefundable amendment application fee of $750, payable by check to the Town. If the applicant submits an amendment to the proposal after the Planning Board’s issuance of a decision on the originally submitted application, the amendment application will be treated as a new application.
	2. Applicant Information. (i) The name, mailing address, phone number, and email address of the applicant, its principal representative, and all consultants and agents involved in preparing the application; and (ii) the general organizational structure of the applicant and any parent companies, owners, principal stockholders, partners, and joint ventures.
	3. Right, Title or Interest. (i) Evidence of the applicant’s right, title, or interest in the properties associated with the proposed community-scale metallic mineral mining operation, by deed, lease, purchase and sale agreement, option to purchase, or some other legal proof of interest. If such evidence is other than outright ownership and title as evidenced by a deed duly recorded in the Washington County Registry of Deeds, the entire unredacted document or documentation—whether by lease, option, contract or otherwise—establishing right, title, or interest shall be submitted; (ii) a copy of the most recently recorded deed or deeds for the properties associated with the proposed operation; and (iii) a copy of all deed restrictions, easements, rights-of-way, or other encumbrances currently affecting the properties.
	4. Technical Capacity. Evidence of the applicant’s ability to undertake the proposed operation in compliance with applicable laws, rules, and ordinances, including: (i) a statement of the applicant’s prior experience in exploration and mining activities; (ii) the names and qualifications of all key personnel involved with site preparation, extraction, beneficiation, reclamation, closure and post-closure activities; and (iii) a list of all mines controlled or operated, in whole or in part, by the applicant (including its parent companies, subsidiaries, predecessors, or related persons) in the U.S. and abroad.
	5. Financial Capacity; Insurance. (i) Evidence of sufficient financial capacity to undertake the proposed operation (including site preparation, extraction, beneficiation, reclamation, closure and post-closure activities) in compliance with applicable laws, rules ad ordinances; and (ii) evidence of comprehensive general liability insurance sufficient to provide personal injury and property damage protection in an amount adequate to compensate persons who may be damaged as a result of the operation (including site preparation, extraction, beneficiation, reclamation, closure and post-closure activities).
	6. Existing Conditions Site Plan. A site plan showing existing conditions of the mining area and within 1,000 feet of the property boundary lines of the operation (including landowner information; property boundaries; existing public and private roads, easements and rights of way; existing structures; impervious areas; topography; water bodies and streams; areas of steep slopes; vegetated areas; areas of vegetation clearing; and wetlands and other sensitive environmental features).
	7. Detailed Project Description. A written project narrative, with detailed information to describe the existing conditions of the site and a full description of the proposed operation (including site preparation, extraction, beneficiation, reclamation, closure and post-closure activities). The narrative must include detailed information of how the operation will be managed so as to address each of the applicable review criteria in Section 2, including how noise, road and traffic impacts, and water quality impacts arising from the operation will be avoided or minimized.
	8. State and Federal Permit Applications and Permits. (i) Copies of applications submitted by the applicant to secure all required state and federal approvals for all or part of the operation, including as required by the Maine Metallic Mineral Mining Rules and the Natural Resources Protection Act; and (ii) copies of all permits, approvals, or denials for exploration or mining activities issued by any state or federal agency for the operation or any other metallic mineral mining and exploration activity conducted by the applicant within the State of Maine.
	9. Traffic Impact Study. A study prepared by a Maine licensed engineer with experience in conducting traffic impact analyses, which indicates the expected average daily vehicular trips, peak-hour volumes, access conditions at the site, distribution of traffic, types of vehicles expected, effect upon the level of service of the street giving access to the site and neighboring streets which may be affected, recommended improvements to maintain the desired level of service on the affected streets, and the anticipated road degradation effects and road maintenance improvement costs attributable to vehicular traffic generated by the operation (including, specifically, the off-site transport of mineral waste).
	10. Additional Information. Any additional information requested by the Planning Board at any time if the Board concludes that such additional information is necessary to determine whether the proposal complies with the requirements of this Ordinance.
4. Completeness Review. Within 30 days of the receipt of the application, the Planning Board must determine whether the application is complete. An application shall be considered complete upon submission of the required application and escrow fees and all information required by this Ordinance. The Board must issue a written statement to the applicant upon its determination that an application is complete. If the application is not complete, the Planning Board must notify the applicant of the specific additional materials necessary to deem the application complete and shall set date by which the additional materials must be submitted. If the additional materials are not submitted by that date, the application will be returned to the applicant as incomplete.
5. Establishment of File**.** Upon determining that an application is complete, the Planning Board must establish a file for the project review. All correspondence and submissions regarding the proposed operation must be maintained in the file and must be made available for review by the public.
6. Preliminary Meeting; Site Inspection.
	1. Preliminary Meeting. After the application is deemed complete pursuant to subsection D, at the request of the Planning Board or upon the petition of five or more registered voters of the Town, the applicant must make a verbal presentation regarding the site and the proposed operation at a regularly scheduled meeting of the Planning Board. Following the applicant's presentation, the Planning Board may ask questions, point out potential problems or issues for future discussion, and make suggestions to be incorporated by the applicant into the application. Members of the public must also be permitted to ask questions or make comments regarding the application. Substantive, lengthy discussions about compliance with review criteria shall be postponed until the Planning Board’s formal review of the application.
	2. Site Inspection. Within 60 days of filing a complete application, the Planning Board must hold an on-site inspection of the property. Notice of on-site inspections must be given in ample time to allow public attendance and must be disseminated in the same manner as the Planning Board distributes its usual Planning Board agendas, and the public must be allowed to accompany the Board. Minutes must be taken in the same manner as for regular meetings. Any costs incurred by the Town in providing the notice must be borne by the applicant out of the application fee.
	3. Rights Not Vested. The submittal of an application, the preliminary meeting, or the on-site inspection shall not be considered the initiation of the Planning Board’s review or a pending proceeding.
7. Technical and Professional Reviews**.** The Planning Board must retain a technical evaluation of the hydrogeologic and traffic impacts of the proposed community-scale metallic mineral mining operation conducted by one or more qualified, independent firms or consultants. The Planning Board may also retain any other independent technical and professional services reasonably necessary to assist in its review of the proposal. Services may include: legal services, a technical analysis of the effects of exploration and mining activities on drinking water and/or on other users or properties, a traffic impact analysis, a noise impact analysis, an analysis of applicable federal and state requirements, and/or an analysis of any issues relevant to the requirements set forth in this Ordinance. The costs of all such technical and professional services shall be borne by the applicant out of the escrow fee. “Independent firm or consultant” means a firm or consultant free from outside control by the applicant and having no financial, fiduciary, or other relationship with or obligation to the applicant that undermines, or has the appearance of undermining, the impartiality of the firm or consultant when evaluating or rendering an opinion regarding the proposed community-scale metallic mineral mining operation.
8. Public Hearing**.** The Planning Board must hold a public hearing on any community-scale metallic mineral mining operation application. Notice of the hearing must be provided as follows:
	1. By the Applicant: In writing, at least 10 days prior to the hearing, to all owners of property that directly abut or are located within 1,000 feet of any property line of the proposed community-scale metallic mineral mining operation. Notice to the owners must be by certified mail, return receipt requested. Notice must also be given by certified mail to the municipal clerk of (a) any municipality or tribal government located within 1,000 feet of the proposed community-scale metallic mineral mining operation, and (b) any neighboring municipalities or tribal governments if any portion of the proposed community-scale metallic mineral mining operation or any portion of any aquifer or recharge area that may be impacted by the proposed operation abuts or crosses a Town boundary. The notice must include the name of the applicant, a brief description of the proposal, and a map identifying the proposed location of the community-scale metallic mineral mining operation and the site layout in relation to nearby roads and properties. The applicant must present a copy of the notice and proof of notification to the Town.
	2. By the Town: By publishing a notice of the date, time, and place of the public hearing in a newspaper of general circulation within the Town, and in a conspicuous public place at least 14 days prior to the hearing.

All costs incurred by the Town in providing the notices required herein shall be borne by the applicant out of the escrow fee.

The Planning Board may adopt procedural rules for the hearing that it deems appropriate, fair, and reasonably calculated to provide full consideration of the issues pertaining to its review of the application, including the imposition of reasonable time limits for presentations by the applicant, intervenors, experts, and members of the public.

1. Decision**.** The Planning Board must, after a public hearing and review of the application, issue written findings of fact and conclusions of law that set forth the reasons it approves, approves with conditions, or denies the application based on the review criteria in Section 2. The Planning Board may impose conditions in any permit issued pursuant to this Ordinance to ensure conformity with the purposes and requirements of this Ordinance. Any approval must specify that the permit (1) expires in two years from the date of issuance and must be renewed in accordance with the requirements of this Ordinance; (2) authorizes the extraction of an annual aggregate quantity of mine waste that does not exceed the maximum quantity set forth in the application or 10,000 tons, whichever is less; and (3) authorizes a mining area that does not exceed the maximum area set forth in the application or 3 acres, whichever is less.
2. Permit Renewal. A permit issued under this Ordinance may be renewed for a two-year period by the Planning Board if, after notice, completeness review, and hearing pursuant to subsections B, D, and H, above, the Planning Board finds the following:
	1. There is no proposed increase in the permit holder’s exploration or mining activities;
	2. There is no change in the location or configuration of the community-scale metallic mineral mining operation;
	3. There has been no material failure by the permit holder to comply with any conditions of the permit;
	4. There has been no material failure by the permit holder to meet the review criteria in Section 2; and
	5. There is credible evidence that the permit holder’s continuing operation would continue meet the review criteria in Section 2 and permit conditions during the renewal period.

The application for a permit renewal must be filed with the Planning Board not less than 90 days prior to the expiration of the existing permit and must include evidence supporting the criteria set forth in subparagraphs 1-5, above, along with a renewal application fee of $500.

For purposes of assisting the Planning Board in making findings regarding the criteria set forth in subparagraphs 1-5, the Code Enforcement Officer must inspect or arrange for an independent firm or consultant, as defined in subsection G, above, to inspect the community-scale metallic mineral mining operation and all records related thereto on a semi-annual (every six months) basis and must prepare or arrange for an independent firm or consultant, as defined in subsection G, above, to prepare an annual report for the Planning Board setting forth all material facts related thereto.

The Code Enforcement Officer and the Planning Board may retain technical and professional services to assist in the renewal application review and inspections, which costs shall be borne by the applicant. The Code Enforcement Officer or the Planning Board may require the applicant to submit and may utilize an escrow fee as provided in subsection C.1, above, to pay for any expenses reasonably related to the renewal application review and inspections and reporting requirements.

**Section 2. Review Criteria**

Before issuing a permit authorizing a community-scale metallic mineral mining operation, the Planning Board must affirmatively find that the operation complies with each of the following review criteria. The burden of establishing and demonstrating compliance with these review criteria rests solely with the applicant.

1. Technical and Financial Capacity; Performance Guarantee.
	1. The applicant must demonstrate that it possesses the necessary technical expertise and financial capacity to design, develop, and operate the mine (including technical expertise and financial capacity to conduct site preparations, exploration activities, mining activities, extraction, beneficiation, reclamation, closure and post-closure activities) in compliance with all state and federal permits, applicable Ordinance criteria, and conditions of approval.
	2. The applicant must furnish a cash account, surety bond or certificate of deposit, made payable to the Town and in form that cannot be cancelled, withdrawn, revoked, or otherwise reduced without the written consent of the Planning Board, to secure the applicant’s obligations under this Ordinance. The amount of the performance guarantee shall be established by the Planning Board based on the detailed cost estimate and cost rationale for each category of the mine plan as submitted to the MDEP pursuant to the Maine Metallic Mineral Mining Rules.
2. Water Quality. In making findings under this subsection B, the Planning Board must consider both the direct effects of the proposed community-scale metallic mineral mining operation and its effects in combination with existing and reasonably anticipated mining operations and water extraction operations from any water sources that may be affected by the community-scale metallic mineral mining operation.
	1. The operation must not adversely affect existing and reasonably anticipated uses and users of groundwater resources or surface water resources.
	2. The operation must not adversely affect the quantity or quality of existing and reasonably anticipated drinking water supplies within and proximate to the Town. To establish a water quality baseline, the applicant must provide water quality test results from all streams and at least 75% of residential wells located within 1,000 feet of the mining area.
	3. The operation must not adversely impact, diminish, or alter the quality of surface waters within the Town.
	4. The operation must not cause any ground subsidence at or beyond the boundary lines of the property or properties associated with the operation.
	5. The operation must not adversely affect the water quality of any aquifer or its recharge areas, or other groundwater sources. A finding by the Planning Board that the operation poses a risk of groundwater contamination—either during active operations or post-closure as a result of acid generation, metal leaching, acid rock drainage or due to other activities within the mining area—is sufficient for the Planning Board to find that this criterion is not met.
	6. The operation must not substantially lower the groundwater table or change groundwater flow patterns.
	7. The operation is not likely to result in the need for treatment following closure.
	8. The operation must not create a health risk to humans or animals, wild or domestic.
3. Community Impacts.
	1. Setbacks from Incompatible Uses: No part of a community-scale metallic mineral mining operation shall be located within one mile of any residential dwelling, commercial retail establishment, or public property (including parks, public lands, preserves, refuges, conserved lands, municipal buildings and schools).
	2. The operation must not result in unreasonable stormwater runoff, erosion, or sedimentation.
	3. Adequate provision must be made for safe and convenient pedestrian and vehicular access to the operation and for traffic circulation, loading, and unloading upon the mining area so as to safeguard against hazards to motorized and pedestrian traffic and traffic congestion and so as to avoid all other safety risks.
	4. Any driveways or access roads serving the operation must be designed to satisfy all applicable Maine Department of Transportation driveway and entrance rules, as well as all applicable local road and driveway standards and state laws.
	5. Any vehicular demand on existing Town roads, public rights-of-way, or public easements occasioned by the operation and associated transport of mine waste must not exceed the capacity of those roadways or cause the premature failure, aging, or diminished utility of those roadways.
	6. The operation must not cause any undue adverse impact on adjacent properties, the holders of surface rights, nearby communities, public roadways, or the Town as a whole. In making findings concerning this criterion, the Planning Board must evaluate any increased traffic volume, frequency, and type on public roads attributable to operation of the mine (including site preparations, exploration activities, mining activities, extraction, beneficiation, reclamation, closure and post-closure activities); visual impacts of the operation on scenic resources; noise and vibrations emitted by the operation; air pollution; glare from lights; or other nuisance conditions arising from the operation.
	7. The proposed transport of mine waste must not unreasonably degrade any public roadways. In making findings concerning this criterion, the Planning Board may impose conditions regarding the routes, hours, and weights of transportation of mining waste on public roadways.
	8. The proposed transport of mine waste must not pose a threat to public health, safety, or welfare
	9. The types of trucks or other vehicles to be used for mine waste transport must comply with all state and federal weight limit, labeling and other requirements. Truck drivers must be licensed to transport mine waste.
	10. The operation must not increase noise levels to the extent that abutting or nearby properties are adversely affected. In order to comply with this criterion, the operation must meet the following requirements:
		1. Except as provided in subsection b and c, below, the maximum permissible sound level of any continuous, regular, frequent, or intermittent source of sound produced by the operation must not exceed the following limits:

|  |  |
| --- | --- |
| 7:00 AM – 7:00 PM | 7:00 PM – 7:00 AM |
| 55 dBA | 45 dBA |

* + 1. When a proposed operation is to be located in an area where the daytime pre-operation ambient hourly sound level (equivalent sound level Leq 60) is equal to or less than 45 dBA or the nighttime pre-development ambient hourly sound level is equal to or less than 35 dBA, the hourly sound level resulting from the operation must not cause the ambient hourly sound levels at the property lines of the operation to be 5 dBA more than the ambient hourly sound level prior to the operation.
		2. Notwithstanding subsections a and b, above, the maximum allowable airblast at any property line may not exceed 90 dBA. A record of each blast, including seismographic data, must be delivered to the Town within 14 days of the blast.
		3. Sound levels must be measured four (4) feet above the ground at the property line of the operation by a meter set on the A-weighted response scale, fast response. The meter must meet the latest version of the American National Standards Institute (ANSI) “American Standard Specification for General Purpose Sound Level Meters” and must have been calibrated at a recognized laboratory within the past year.
		4. The following activities are exempt from the requirements of subsections a, b, and c, above: noises of safety signals, warning devices, and emergency pressure relief values and other emergency activities.
		5. For purposes of this subsection 9:
			1. “Ambient sound” means at a specified time, the all-encompassing sound associated with a given environment, being usually a composite of sounds from many sources at many directions, near and far, including the community-scale metallic mineral mining operation and the activities incidental thereto.
			2. “Equivalent sound level” or “Leq 60” means the equivalent constant sound level to that emitted by the varying sound over one hour and, specifically, the level of the mean-square A-weighted sound pressure measured over one hour.
	1. Hours of operation may not be before 7:00 AM or after 6:00 PM; however, the Planning Board may impose additional restrictions on hours of operation, including on vehicular traffic on public roadways. “Hours of operation” refers to hours when exploration or mining activities are occurring at the facility and hours when vehicular traffic associated with the operation is allowed on public roads within the Town.
	2. The applicant must submit all monitoring results to the Planning Board on the same timeframe as such results are provided to the MDEP pursuant to the Maine Metallic Mineral Mining Rules.

**ARTICLE IV. ENFORCEMENT; INSPECTIONS APPEALS; SEVERABILITY; AMENDMENT**

**Section 1. Enforcement**

The following acts or omissions constitute a violation of this Ordinance:

1. Conducting any large-scale metallic mineral mining operations.
2. Conducting any community-scale metallic mineral mining operations without first obtaining a permit as required hereunder.
3. Conducting any community-scale metallic mineral mining operations not in compliance with the review criteria set forth hereunder or the conditions of any permit issued hereunder.
4. Any material misstatement of fact in any application or supporting documentation discovered subsequent to the issuance of any permit hereunder.
5. Any failure to comply with and maintain the standards set forth hereunder including exceeding maximum extracted mine waste or bulk sampling thresholds, exceeding maximum mining areas, or operating outside of approved hours of operation.
6. Any failure to comply with any provision of this Ordinance.

This Ordinance shall be enforced by the municipal officers of the Town or their duly authorized designees, and shall be enforceable by and under, and subject to all the terms, fines, and penalties of 30-A M.R.S. § 4452.

**Section 2. Inspections**

The Code Enforcement Officer may, at any time, enter any exploration or mining site (including any community-scale or large-scale metallic mineral mining operation), take samples, and conduct tests in order to determine compliance with any provision of this Ordinance or other applicable requirements. The Code Enforcement Officer may require the submission of annual self-inspection reports, signed by a qualified professional, on exploration activities conducted by a permit holder.

**Section 3. Appeals**

1. Any person or entity aggrieved by a decision, action, or failure or refusal to take action of the Code Enforcement Officer or the Planning Board may appeal to the Pembroke Board of Appeals within 30 days of the decision, action, or failure or refusal to take action complained of, by filing an appeal at the office of the Town Clerk.
2. All appeal applications shall be accompanied by a nonrefundable appeal application fee of $100, payable by check to the Town.
3. Appeals from decisions of the Code Enforcement Officer shall be de novo. The Code Enforcement Officer must transmit to the Board of Appeals the decision and all documents and other evidence on which the decision was based, which may be considered as evidence in the de novo proceeding. The Board of Appeals must conduct a public hearing at which all persons have the right to present additional testimony and documentary evidence. At the public hearing, any party has the right to cross-examine witnesses. The standard of review is whether, on the basis of the evidence before the Board of Appeals, the application complies with the requirements of the Ordinance. The burden of proof is on the applicant for the permit or approval. The Board of Appeals has authority to grant or deny a permit or approval or to remand the matter to the Code Enforcement Officer for further proceedings.
4. Appeals from decisions of the Planning Board shall be purely appellate. The Code Enforcement Officer shall transmit to the Board of Appeals the decision of the Planning Board and all documents and other evidence comprising the record on which the Planning Board decision was based. The Board of Appeals shall conduct a public proceeding at which all persons shall have the right to present legal argument concerning the decision of the Planning Board. The Board of Appeals shall not permit the introduction of additional testamentary or documentary evidence. The standard of review shall be whether the decision of the Planning Board was arbitrary or capricious, based on error of law, or based on findings of fact not supported by substantial evidence in the record. The Board of Appeals shall have authority to sustain or reverse a decision of the Planning Board or to remand the matter to the Planning Board for further proceedings.
5. The affirmative vote of three members of the Board of Appeals shall be necessary to grant an approval or permit on appeal from a decision of the Code Enforcement Officer or to grant an appeal from a decision of the Planning Board. The failure of the Board of Appeals to issue a written notice of its decision, directed to the appellant by registered mail, within 60 days of the submission of a complete appeal application shall constitute a denial of the appeal.
6. Any aggrieved party may appeal a decision of the Board of Appeals to Maine Superior Court within 45 days of the date of the vote of the Board of Appeals in accordance with 30-A M.R.S. § 2691 and Rule 80B of the Maine Rules of Civil Procedure.

**Section 4. Severability**

If any section, part of a section, or any provision this Ordinance is declared by a court of competent jurisdiction to be unconstitutional, invalid, or unenforceable, such declaration shall not affect the validity or enforceability of the Ordinance as a whole, or any part of provision other than that specifically declared to be unconstitutional, invalid, or unenforceable.

**Section 5. Amendment**

This Ordinance may be amended by a vote of a Town Meeting, upon a Town Meeting warrant article submitted by the Selectmen.