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

**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 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. Definitions**

In the construction of this Ordinance, the following definitions apply. In addition, the word “including” means “including, but not limited to.”

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.

Exploration or Exploration Activity: Any bulk sampling or exploratory activity associated with a metallic mineral mining operation.

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, and any successor provisions.

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.

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 “small-scale” or “large-scale” as follows:

|  |  |  |
| --- | --- | --- |
|  | Small-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 |

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.

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.

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.

Ore: Rock containing sufficient metallic mineralization to process using technologies that exist at the mining operation.

Overburden: Soil, rock, or other materials which lie above or between the natural mineral deposits to be mined.

Person: An individual, firm, partnership, association, company, limited liability company, corporation, joint venture, municipality, governmental entity, or other legal entity.

Tailings: The product resulting from the milling and mineral concentration process remaining after extraction of minerals by physical or chemical means.

**Section 4. Exempt Activities**

The following activities are exempt from the requirements of this Ordinance:

1. Excavations of sand, fill, gravel, clay, topsoil, peat, or silt that are not associated with metallic mineral mining operations.
2. Except as provided in Section 7 (Inspections), small-scale metallic mineral mining operations.

**Section 5. 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.

**Section 6. Enforcement**

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 7. Inspections**

The Code Enforcement Officer may, at any time, enter any exploration or mining site (including any small-scale or large-scale metallic mineral mining operation), take samples, and conduct tests and measurements in order to determine compliance with any provision of this Ordinance or other applicable requirements.

**Section 8. Appeals**

Any person or entity aggrieved by a decision, action, or failure or refusal to take action of the Code Enforcement Officer (“Decision”) pursuant to this Ordinance may appeal to the Maine Superior Court in accordance with 30-A M.R.S. § 2691 and Rule 80B of the Maine Rules of Civil Procedure.

**Section 9. 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 10. Amendment**

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

**Section 11. 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.

**Section 12. 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 small-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.