

ORDINANCE NO. 2003 34

**AN ORDINANCE AMENDING SECTION 3-28-C-7 OF THE UTAH COUNTY ZONING ORDINANCE TO PROVIDE AN EXCEPTION TO ROAD PAVING STANDARDS FOR DUST CONTROL IN GRAVEL PITS IN REMOTE AREAS**

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF UTAH ORDAINS AS FOLLOWS:

Part I:

Section 3-28-C-7 of the Utah County Zoning Ordinance is hereby amended to read as follows:

7. Dust generated in the extraction and processing of the earth products shall be kept under control by the operator and contained on-site by paving main roads in the pit, wetting extraction areas and loaded trucks, placing berms or landscape screening for protection from the prevailing winds and other suitable measures.

Exception: The paving of the main roads of the pit may be waived by the zoning administrator if all portions of the pit extraction area are at least 6000 feet from any dwelling or cultivated crops, and any un-paved access road to the pit from the paved road system is at least 500 feet from any dwelling or cultivated crops. To qualify for this exception the road shall have dust control accomplished with a coating of 32% magnesium chloride treatment at a rate of 1 ton per 3300 square feet, which coating shall be applied twice yearly. Further, water shall be added as needed so that the fugitive dust shall not exceed 20% opacity. If any of these qualifications are not met as determined by tests performed by the zoning administrator, the county business license administrator, or the Utah State Division of Air Quality, or their designees, the pit operator shall cease operations, the zoning administrator shall revoke the zoning compliance permit, and the business license shall not be renewed until the road is paved.

Part II:

Insert pages reflecting the above amendments, including a title page which bears the enactment date of this ordinance, are hereby ordered to be filed in the three copies of the Utah County Zoning Ordinance which are on file with the Utah County Auditor/Clerk.

Part III:

If any of the sections, sentences, clauses or provisions of this ordinance shall for any reason be

adjudged inapplicable or invalid by a court of competent jurisdictions, such shall not affect or invalidate the remaining portion contained herein.

Part IV:

This ordinance shall take effect: (1) sixteen [16] days after it is passed, or (2) after it has been published, whichever date is later.

PASSED and ordered published this 7<sup>th</sup> day of October, 2003.

UTAH COUNTY COMMISSION

VOTE

*Gary R. Herbert*  
Gary R. Herbert, Chairman

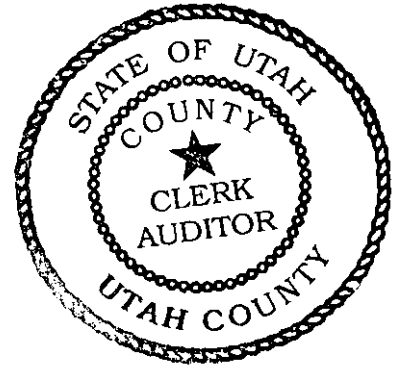
*aye*

*Steve White*  
Steve White, Commissioner

*aye*

*Jerry D. Grover*  
Jerry D. Grover, Commissioner

*aye*



ATTEST:  
Kim Jackson  
County Auditor/Clerk

APPROVED AS TO FORM:  
Kay Bryson,  
County Attorney

By: *Linda Aueblans*  
Deputy

By: *Paul [Signature]*  
Deputy

Date of Publication: once only, as soon as possible

GARY BURNINGHAM MATTER (motion only)  
(hear 8/19/03)

Motion: Dean Miner

Second: Tom Liddle

That the Planning Commission recommend to the County Commission that the zoning ordinance be amended to add the following exception: The paving of the main roads of the pit may be waived by the zoning administrator if all portions of the pit extraction area are least 6000 feet from any dwelling or cultivated drops, and any un-paved access road to the pit from the paved road system is at least 500 feet from any dwelling or cultivated crops. To qualify for this exception, the road shall have dust control accomplished with a coating of 32% +/- magnesium chloride treatment at a rate of 1 ton per 3300 square feet, which coating shall be applied twice yearly. Further, water shall be added as needed so that the fugitive dust shall not exceed 20% opacity. If any of these qualifications are not met as determined by tests performed by the zoning administrator, the county business license administrator, or the Utah State Division of Air Quality, or their designees, the pit operator shall cease operations, the zoning administrator shall revoke the zoning compliance permit, and the business license shall not be renewed until the road is paved.

The motion passed by a unanimous (5-0) vote.

August 19, 2003

## UTAH COUNTY PLANNING COMMISSION STAFF REPORT

### I. APPLICATION:

- |                     |   |   |
|---------------------|---|---|
| <b>A. APPLICANT</b> | - | <b>Burningham Enterprises, Inc.</b>   |
| <b>B. REQUEST</b>   | - | <b>Proposed zone text amendment to Section 3-28-C-7, to create an exception to the requirement that the main roads of a gravel pit must be paved for dust control</b> |
| <b>C. LOCATION</b>  | - | <b>All zones allowing gravel extraction (M&amp;G-1, I-1, RA-5, CE-1 Zones)</b>  |

### II. STAFF ANALYSIS:

Section 3-28-C -7 contains the seventh of ten conditions which the Zoning Administrator must determine have been met in order to issue a permit for an open pit mine. It currently states:

7. Dust generated in the extraction and processing of the earth products shall be kept under control by the operator and contained on-site by paving main roads in the pit, wetting extraction areas and loaded trucks, placing berms or landscape screening for protection from the prevailing winds and other suitable measures.

The issue at hand is the requirement to pave the main roads of the pit. This has always included the access road from the nearest paved county or state road for the purpose of protecting any orchards, field crops, houses and businesses bordering the pit access road from being covered with dust.

The applicant points out that the county, in its recent two-year study of the conflicts between gravel pits and housing subdivisions, sought to encourage the gravel extraction industry to move to the west, away from the dense population area. However, because there are few paved roads and houses in the west part of the county, the economics of requiring paved access roads is a counter incentive and encourages the extraction industry to stay on the east side where the paved roads and people are congregated.

The applicant proposes that the road-surfacing standard for dust control be a mag-chloride coating in places where the pits are located at least 6000 feet from any dwelling. Re-coating would be required twice a year, plus watering would be required if the dust level rose about a 20% opacity.

The proposal is not clear about whether just the pit extraction area must be 6000 feet from any house, or whether both the pit and the un-paved access road must be 6000 feet from any house. Further, because the watering and re-coating actions are maintenance issues that arise after the permit would be issued, it is a concern that the proposal does not state who does the monitoring, and what happens if the maintenance standards are not met. In general, zoning standards which are determined before a permit is issued are enforced more fully than those things requiring monitoring after a permit is issued.

The zone text change application contains suggested wording for the change. However, because only the Planning Commission or County Commission may initiate a zoning text change [RE: zoning ord., section 7-26-A & B, and section 17-27-402 & 403 Utah Code Annotated 1953] the final wording must be that which is generated by the Planning Commission.

### III. STAFF RECOMMENDATION:

That the Planning Commission recommend to the Utah County Commission that section 3-28-C-7 of the zoning ordinance be amended to add the following exception, based on the findings stated below:

Exception: The paving of the main roads of the pit may be waived by the zoning administrator if all portions of the pit extraction area, and the driveway extending to the pit from the paved road system, is at least 6000 feet from any dwelling, office, or other building with human occupancy, and/or any orchard or land cultivated and growing field crops. To qualify for this exception, the road shall have dust control accomplished with a coating of 32% +/- magnesium chloride treatment at a rate of 1 ton per 3300 square feet, which coating shall be applied twice yearly. Further, water shall be added as needed so that the fugitive dust shall not exceed 20% opacity. If any of these qualifications are not met as determined by tests performed by the zoning administrator, the county business license administrator, or the Utah State Division of Air Quality, or their designees, the pit operator shall cease operations, the zoning administrator shall revoke the zoning compliance permit, and the business license shall not be renewed until the road is paved.

#### *Findings:*

1. The exception would make it possible to use the west county gravel sites instead of encouraging the pits to remain near the dense population
2. The wording has a sufficient clarity and basis for adequate enforcement.

UTAH COUNTY  
 APPLICATION FOR A ZONING ORDINANCE TEXT AMENDMENT

Check - Agency Approval Needed <input checked="" type="checkbox"/> Planning Commission <input checked="" type="checkbox"/> County Commission	Fee Paid <u>\$ 50<sup>00</sup></u> Receipt # <u>004152</u> Application Taken By <u>Jolley</u>
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All zoning ordinance text amendments are subject to the requirements set forth in the Utah County Zoning Ordinance. All zoning ordinance text amendments are subject to approval by the Planning Commission and the County Commission.

In preparation of any zone text amendment, due and careful consideration will be given to the recommendations of the general plan, the stated intent of the zoning ordinance, and to the character of the area with a view of conserving the value of buildings and encouraging the most appropriate use of land throughout the county. No application can be approved when it is determined that the proposed amendment does not promote the health, safety, morals, convenience, or general welfare of the public.

In order to meet the intent of the requirements given above, the applicant is asked to complete the following application:

(Please attach all maps and documents to application)

Applicant's Name: <u>Burningham Enterprises, Inc</u> Date: <u>July 18, 2003</u> Mailing Address: <u>P.O. Box 974 American Fork, Utah 84003</u> Phone: <u>(801) 756-8138</u> Fax: <u>(801) 756-4123</u>
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## General Overview

### Executive Summary Concerning Request for Exception

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Several decades ago gravel extraction and processing operations were able to co-exist harmoniously in Utah County. Gravel pits were located on the east benches and for the most part were buffered from the general population areas. Increasing, over the last couple of decades, population growth has been pushing much more extensively towards the east benches. With that population growth there has also increased the need for schools to locate more closely to population shifts. Hence, more schools, more churches, and more people located ever more closely to gravel pits. With the near impossibility of permitting any new reserves on the east benches of Utah County that also means that there is increased trucking and extraction from the existing pits. There is, in most locales, virtually no buffer zone between the extraction industry activities and new subdivisions.

In public hearings, when new or expanding permits have been discussed, much of the discussion has been centered on moving extraction activities off of the east bench to west of Utah Lake, if at all possible. Of course the industry answer has been one of economics.

The exception that is being proposed is in response to the emphasis put forth by the County to make an effort to move more gravel extraction to the west side. Also, the exception addresses the need to make it economically feasible to do that. In order to locate into an area that has very little, if any, chance of visibility by the public as well as a buffer for any potential noise or dust pollution; the exception is being proposed.

The exception is designed with specifics in order to assure that any change to the status quo as far as population proximity to the gravel pits is addressed, i.e., if residences are closer than 6,000', then the exception does not apply. Also, particular to the current area being addressed is the improvement that will be made to the current ingress and egress of the 3 currently operating extraction industries that do nothing to maintain the road and control dust.

In conclusion, in order to make it economically feasible as well as provide the incentive for companies to consider locating gravel extraction outside of densely populated areas we feel that it is important for the commission to seriously consider the proposed exception with its built-in specifics and defaults.

1. Amendment to what zoning ordinance section or sections: 3-28: C - 7
2. Describe in detail the proposed amendment: Exception: Any mineral excavation site located at least 6,000 ft. from any residence will be required, at a minimum, to control dust from ingress and egress routes with a 32% +/- magnesium chloride treatment at a rate of 1 ton per 3300 sq. ft., applied twice yearly. Additional water treatment, if necessary, shall limit fugitive dust to no greater than 20% opacity.
3. How will the proposed zoning ordinance text amendment avoid causing any adverse condition not already present in the zone? The proposal will improve existing adverse conditions on a road that is currently being used by three extraction companies that are doing nothing to control dust that we will maintain.
4. In what ways does the proposed amendment promote the health, safety, morals, convenience, or general welfare of the public? Similar to #3 above, it will vastly improve an existing condition. In the greater context, it allows the County to move mineral extraction from the east side of a heavily traveled, densely populated area to an area that has a history of mineral extraction, is accessed by a main highway, and therefore, does not initiate its travel through residential and school neighborhoods. Community safety, health, and general welfare are all enhanced through an ordinance which promotes extraction away from populated areas.
5. To the best of my knowledge the above information is accurate and complete.

Gary Burningham  
Signature of Applicant

GARY BURNINGHAM

# PROOF OF PUBLICATION

from

## The Daily Herald

STATE OF UTAH } SS.  
Utah County }

I, Kelly Blair , being first duly sworn depose and say that I am the Legal Billing Clerk of the Daily Herald, a newspaper of general circulation, published seven times each week at Provo, Utah, County of Utah; that the notice attached hereto, #062230-#2003-34-NOTICE ORDINA , and which is a copy, was published in said newspaper the first publication having been made on the 12nd day of October, 2003, and the last on the 12nd day of October, 2003; that said notice was published in the regular and entire issue of every number of the paper during the period and times of publication, and the same was published in the newspaper proper and not in the supplement.

**NOTICE**  
ORDINANCE NO. 2003-34, ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF UTAH COUNTY, UTAH ON OCTOBER 7, 2003, AMENDING SECTION 3-28-C-7 OF THE UTAH COUNTY ZONING ORDINANCE TO PROVIDE AN EXCEPTION TO ROAD PAVING STANDARDS FOR DUST CONTROL IN GRAVEL PITS IN REMOTE AREAS.

A COMPLETE COPY OF THE ORDINANCE IS AVAILABLE AT THE COUNTY CLERK/AUDITOR'S OFFICE. COMMISSIONER GARY R. HERBERT, COMMISSIONER STEVE WHITE, AND COMMISSIONER JERRY D. GROVER VOTED IN FAVOR OF THE ORDINANCE.  
Legal Notice 062230 Published in The Daily Herald  
October 12, 2003

*Kelly Blair*  
Subscribed and sworn before me  
this 12nd day of October, 2003.

*Lisa Danette Stone*  
Notary Public

Residence: Eagle Mountain  
My commission expires February, 2005

