

RESOLUTION 09-54

RESOLVED to approve Ordinance 22, which reads as follows:

FREEBORN COUNTY, MINNESOTA
ORDINANCE NO. 22

Aggregate Material Removal Production Tax

An ordinance imposing a production tax on the removal of aggregate from pits, quarries, or deposits located within the County; establishing reporting requirements; providing penalties for failure to comply with the provisions of this ordinance; and providing for distribution of revenues as collected under this ordinance, pursuant to Minnesota Statute 298.75, as amended by Minnesota Laws 2001.

THE COUNTY BOARD OF FREEBORN COUNTY ORDAINS:

1.00 Definitions. The following words and phrases, when used in this ordinance, unless the content clearly indicates otherwise, shall have the meanings given them in this section.

1.01 "County" shall mean the County of Freeborn.

1.02 "County Board" shall mean the Freeborn County Board of Commissioners and their authorized representatives.

1.03 "Aggregate material" shall mean nonmetallic natural mineral aggregate including, but not limited to, sand, silica sand, gravel, crushed rock, limestone, granite, and borrow, but only if the borrow is transported on a public road, street, or highway. Aggregate material must be measured or weighed after it has been extracted from the pit, quarry, or deposit.

1.04 "Person" shall mean any individual, firm, partnership, corporation, organization, trustee, association, or other entity.

1.05 "Operator" shall mean any person engaged in the business of removing aggregate from the surface or subsurface of the soil, for the purpose of sale, either directly or indirectly, through the use of the aggregate in a marketable product or service.

1.06 "Extraction Site" shall mean a pit, quarry, or deposit containing aggregate material and any contiguous property to the pit, quarry, or deposit that is used by the operator for stockpiling the aggregate material.

1.07 "Importer" shall mean any person who buys aggregate material produced from a county that does not impose an aggregate material removal production tax or another state and causes the aggregate material to be imported into a county in this state that imposes a tax on aggregate material.

2.00 IMPOSITION OF TAX

2.01 The County imposes upon every importer and operator a production tax of 21.5 cents per cubic yard or of 15 cents per ton of aggregate material removed. Except that the County Board may decide not to impose this tax if it determines that in the previous year operators removed less than 20,000 tons or 14,000 cubic yards of aggregate material from the county.

2.02 The tax shall be imposed on aggregate material produced in the county when the aggregate material is transported from the extraction site or sold. When aggregate material is stored in a stockpile within the State of Minnesota and a public highway, road, or street is not used for transporting the aggregate material, the tax shall be imposed either when the aggregate material is sold, or when it is transported from stockpile site, or when it is used from the stockpile, whichever occurs first. The tax shall be imposed on an importer when the aggregate material is imported into Freeborn County. If the aggregate material is transported directly from the extraction site to a waterway, railway, or another mode of transportation other than a highway, road, or street, the tax imposed shall be proportioned equally between the county where the aggregate material is extracted and the county to which the aggregate material is originally transported. If that destination is not located in Minnesota, then the county where the aggregate material was extracted shall receive all of the proceeds of the tax.

3.00 REPORTING REQUIREMENTS

3.01 By the 14th day following the last day of each calendar quarter every operator or importer shall make and file with the County Auditor of the county in which the aggregate material is removed or imported, a correct report under oath, in such form and containing such information as the Auditor shall require relative to the quantity of aggregate material removed or imported during the preceding calendar quarter. The report shall be accompanied by a remittance of the amount of tax due.

3.02 If any of the proceeds of the tax is to be apportioned, as in subdivision 2, the operator or importer shall also include in the report any relevant information concerning the amount of aggregate material transported, the tax and the county of destination. The County Auditor shall notify the County Treasurer of the amount of such tax and the county to which it is due. The County Treasurer shall remit the tax to the appropriate county within 30 days.

3.03 If the County Auditor has not received the report required by Section 3.01 by the 15th day after the last day of each calendar quarter from the operator or importer, or has received an erroneous report, the County Auditor shall estimate the amount of tax due and notify the operator or importer by registered mail of the amount of tax so estimated within the next 14 days. An operator or importer may, within 30 days from the date of mailing the notice, and upon payment of the amount of tax determined to be due, file in the office of the County Auditor a written statement of objections to the amount of taxes determined to be due. The statement of objections shall be deemed to be a petition within the meaning of Chapter 278 and shall be governed by Sections 278.02 and 278.13.

4.00 ENFORCEMENT, VIOLATIONS, AND PENALTIES

4.01 Failure to file the report and submit payment shall result in a penalty of \$5 for each of the first 30 days, beginning on the 15th day after the last day of each calendar quarter, for which the report and payment is due and no statement of objection has been filed as provided in 3.03, and a penalty of \$10 for each subsequent day shall be assessed against the operator or importer who is required to file the report. The penalties imposed shall be collected as part of the tax and credited to the county revenue fund. If neither the report nor a statement of objection has been filed after more than 60 days have elapsed from the date when the notice was sent, the operator or importer who is required to file the report is guilty of a misdemeanor.

4.02 It is a misdemeanor for any operator or importer to remove aggregate from a pit, quarry, or deposit, or for any importer to import aggregate material unless all taxes due under this ordinance for the previous reporting period have been paid or objections thereto have been filed.

4.03 It is a misdemeanor for the operator or importer who is required to file and report to file a false report made with intent to evade the tax.

4.04 The County Auditor or its duly authorized agent may examine records, including computer records, maintained by an importer or operator. The term "record" includes, but is not limited to, all accounts of an importer or operator. The County Auditor or its duly authorized agent must have access at all reasonable times to inspect and copy all business records related to an importer's or operator's collection, transportation, and disposal of aggregate material to the extent necessary to ensure that all aggregate material production taxes required to be paid have been remitted to the county. The records must be maintained by the importer or operator for no less than six (6) years.

4.05 Any person who shall violate this ordinance shall be guilty of a misdemeanor and upon conviction thereof, punished by a fine not to exceed seven hundred dollars (\$700) or by imprisonment in the county jail for a period not to exceed ninety (90) days or both.

5.00 DISTRIBUTION OR REVENUES

5.01 All money collected as taxes under this ordinance shall be deposited in the County treasury and credited as follows, for expenditure by the County Board:

(Five Percent (5%) of the total tax collected by the County shall be retained by the County Auditor as an Administrative Fee)

a) Forty-two and one-half (42.5) percent to the County road and bridge fund (after 5% is deducted) for expenditure for the maintenance, construction, and reconstruction of roads, highways, and bridges;

b) Forty-two and one-half (42.5) percent to Township/City General Fund where mine is located (after 5% is deducted) or to the County, if the mine is located in an unorganized township; and

c) Fifteen (15) percent (after 5% is deducted) to a special reserve fund which is hereby established, for expenditure for the restoration of abandoned pits, within the County.

If there are no abandoned pits, quarries, or deposits located within the County, this portion of the tax shall be used for any other unmet reclamation needs or for conservation or other environmental needs.

6.00 SEVERABILITY

6.01 It is hereby declared to be the intention of the County Board that this ordinance, and every provision thereof, shall be severable in accordance with the following:

a) If any Court of competent jurisdiction shall adjudge any provision of this ordinance to be invalid, such judgment shall not affect any other provisions of this ordinance not specifically included in said judgment.

b) If any Court of competent jurisdiction shall adjudge invalid the application of any provision of this ordinance to a particular pit, quarry, deposit, or operator or importer, such judgment shall not affect the application of said provision to any other pit, quarry, deposit, or operator or importer not specifically included in said judgment.

7.00 PROVISIONS ARE CUMULATIVE

7.01 The provisions of this ordinance are cumulative to all other laws, ordinances, and regulations heretofore passed, or which may be passed hereafter, covering any subject matter in this ordinance.

8.00 EFFECTIVE DATE

8.01 This ordinance shall be effective the day after passage by the County Board.

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I hereby certify that the above is a true and correct copy of a resolution adopted by the Freeborn County Board of Commissioners at their session on the 17th day of March 2009, and as appears on the Minutes of their record of proceedings.

John Kluever
Administrator/Clerk
County of Freeborn
State of Minnesota