

ORDINANCE OF THE TOWN OF COTTAGE GROVE, WISCONSIN
Adopted pursuant to Sec. 25.01 of the Town of Cottage Grove Code

Title: Nonmetallic Mining Regulation

Code Section(s) created, amended, or repealed	<u>7.02(16), Ch. 17, portions of sec. 18.01</u>
Presented to Board by	<u>Town Attorney</u>
Committee Review by	<u>None</u>
Date(s) Public Hearing(s) held (if required)	<u>December 20, 2004</u>
Date adopted	<u>December 20, 2004</u>
Vote	<u>5-0</u>
Date of posting of adoption of ordinance	<u>December 31, 2004</u>

The Town Board of the Town of Cottage Grove does ordain as follows:

1. Section 7.02 (16) shall be amended to read as follows:

7.02(16) NONMETALLIC MINING PERMIT FEES

- (a) Unless otherwise specified in the code of ordinances of the town, a permit fee of \$150.00, in addition to any fee specified in 07.02(9), if the application requires a change of land use; shall be paid to the town for a nonmetallic mining permit.
- (b) Failure to submit the total of all town fees due at the time of application, will delay processing of the application and may be considered grounds for refusal to issue or re-issue the nonmetallic mining permit.

2. Chapter 17 shall be amended to read as follows:

CHAPTER 17 - NONMETALLIC MINING SITES

17.01 NONMETALLIC MINING REGULATION

(1) AUTHORITY AND PURPOSE

(a) Pursuant to the provisions of s. 60.22(3), Stat., the Town Meeting has authorized the Town Board to exercise village powers, which powers include the protection, promotion, management and control of the health, safety, welfare and convenience of the general public. Pursuant to such general police powers, the Town of Cottage Grove hereby adopts this nonmetallic mining regulation ordinance.

(b) This ordinance is not intended to and shall not regulate nonmetallic mining reclamation under Chapter 295 of the Wisconsin Statutes or under Wis. Admin. Code NR 135. This TCG Chapter 17 is not a nonmetallic mining reclamation ordinance and the Town is not exercising its authority under s. 295.14 to enact a nonmetallic mining reclamation ordinance. Nonmetallic mining reclamation in the Town shall be subject to any and all Dane County and State regulations pertaining to nonmetallic mining reclamation. The purpose of this Chapter 17 is to protect the general health, safety and welfare of the public by regulating certain conditions at nonmetallic mining sites which regulations are not expressly preempted by state statute or code.

(2) DEFINITIONS. In this chapter:

- (a) "Nonmetallic mining" has the meaning specified in s. 295.11 (3), Stats.
- (b) "Nonmetallic mining reclamation" has the meaning specified in s. 295.11 (4), Stats.
- (c) "Nonmetallic mining site" has the meaning specified in s. 295.11 (6), Stats.
- (d) "Operator" has the meaning specified in s. 295.11 (7), Stats.

(3) APPLICABILITY OF ORDINANCE AND STANDARDS

- (a) The provisions of this ordinance shall apply to all portions of a nonmetallic mining site within the Town limits, including unreclaimed portions of a nonmetallic mining site that relate to nonmetallic mining that occurred before the effective date of this section.
- (b) Notwithstanding s. 13.48(13), Stats., the provisions of this ordinance shall apply to all nonmetallic mining within the Town limits operated for the benefit or use of the state or any state agency, board, commission, department, or municipality.
- (c) The financial assurance requirements specified in s. TCG 17.02(2), do NOT apply to nonmetallic mining conducted by the state or a municipality.

(4) EXEMPTED ACTIVITIES

The provisions of this ordinance do NOT apply to the following activities:

- (a) Excavations or grading by a person, solely for domestic or farm use at their residence or farm.
- (b) Excavations or grading conducted for the construction, reconstruction, maintenance or repair of a highway, railroad, airport facility or any other transportation facility if the excavation or grading is within the property boundaries of the transportation facility.
- (c) Grading conducted for preparing a construction site or restoring land following a flood or other natural disaster.
- (d) Excavations for building construction purposes.
- (e) Nonmetallic mining sites of less than one acre.
- (f) Any mining operation, the reclamation of which is required in a permit obtained under Chapter 293, Stats.
- (g) Any activities required to prepare, operate or close a solid waste disposal facility under subchs. II to IV of Chapter 289, Stats., or a hazardous waste disposal facility under Chapter 291, Stats., that are conducted on the property on which the facility is located. However, this ordinance does apply to activities related to solid waste or hazardous waste disposal that are conducted at a nonmetallic mining site that is not on the property on which the solid waste or hazardous waste disposal facility is located such as activities to obtain nonmetallic minerals to be used for lining, capping, covering or constructing berms, dikes or roads.

(h) Dredging for navigational purposes, to construct or maintain farm drainage ditches, and for the remediation of environmental contamination and the disposal of the spoils from that dredging.

1.

2. (5)SEVERABILITY AND SAVINGS CLAUSE.

3.

4. Should any portion of this ordinance be declared unconstitutional or invalid by a Court of competent jurisdiction, any such portion shall be severed the remainder of this ordinance shall not be affected or rendered invalid thereby. Whenever there may be a conflict between any provision of this ordinance and any other federal state or local law, regulation or requirement, the most stringent law, regulation or requirement shall control.

(6) PENALTY FOR VIOLATION; ENFORCEMENT

In addition to and separate from, the possible liability from a failure to comply with any other applicable federal, state, county or municipal regulation, any violation of this ordinance shall be punishable as a class D forfeiture under s. TCG 25.04. In addition to issuing a municipal citation, the Town may enforce this ordinance by injunction or any other applicable legal remedy.

(7) EFFECTIVE DATE

The Effective Date of this ordinance shall be January 1, 2005.

17.02 NONMETALLIC MINING PERMIT

(1) APPLICATION

(a) No person may conduct nonmetallic mining within the Town limits without first obtaining a nonmetallic mining permit from the Town Board.

(b) Application shall be made to the Town Clerk a minimum of 30 working days prior to the proposed effective date of the permit, using the Town of Cottage Grove nonmetallic mining permit application form. A current copy of this form is available from the Town Clerk's office.

(c) An application for nonmetallic mining will not be processed until the appropriate fee specified in s. TCG 07.02(16) has been paid to the Town and the operation plan specified in s. TCG 17.03 has been received by the Clerk.

(2) FINANCIAL ASSURANCE

(a) A nonmetallic mining permit shall not be issued until the operator provides the Town with either a bond, deposit of funds, or established escrow account in an amount specified by the Town Board.

(b) In the event the operator fails to comply with the requirements of this ordinance or the Town nonmetallic mining permit or perform any work required thereunder, the Town Board shall have the authority to use the funds provided for in (2)(a) to perform any such required work.

(c) If the funds provided for in (2)(a) prove insufficient, all costs incurred by the Town as a result of an enforcement action taken to resolve a continuing violation, other than those taken as a result of a court order,

shall be charged to the nonmetallic mining site involved, and shall be entered on the official tax roll as a special assessment against the property.

(3) PUBLIC HEARING

A public hearing on the application for nonmetallic mining shall be scheduled within 30 days following receipt of the complete application and fees specified in s. TCG 17.02(1).

(4) PERMIT REQUIRED

(a) Except as otherwise specifically noted, all nonmetallic mining permits shall be valid from July 1 of one year, to June 30 of the following year.

(b) The Clerk shall send a notice of renewal, along with a blank application form, to permit holders annually no later than May 1 by certified mail, return receipt requested. Prior to May 1, 2005, the Clerk shall include a copy of this Chapter 17 nonmetallic mining ordinance along with the notice of renewal and blank application form. After May 1, 2005, a copy of this nonmetallic mining ordinance shall be made available at no charge to permit holders, upon request.

(c) This Chapter 17 nonmetallic mining ordinance and the permits granted hereunder shall first apply to the July 1, 2005 to June 30, 2006 permit year. All nonmetallic mining permits granted by the Town under the prior Chapter 17 for the July 1, 2004 to June 30, 2005 permit year shall remain in full force and effect until June 30, 2005 and expire on June 30, 2005.

(5) FEES

A fee, as specified in s. TCG 07.02(16), shall accompany each application for a nonmetallic mining permit. The fee shall be paid to the Town in US currency, money order, or check payable to: the Town of Cottage Grove. An itemized receipt shall be provided for all currency received.

(6) REVOCATION, SUSPENSION, REFUSAL TO ISSUE OR RENEW

(a) No permit shall be granted to any nonmetallic mining site until all requirements under s. TCG 17.02 have been met and until an operation plan as described in s. TCG 17.03 has been submitted to and approved by the Town Board. Failure to meet the requirements under s. TCG 17.02 or failure to receive Town Board approval of an operation plan under s. TCG 17.03 may be the basis for nonrenewal of a Town nonmetallic mining permit.

(b) No permit shall be granted to any nonmetallic mining site for which taxes, assessments, or other claims of the Town are delinquent and unpaid, or to any operator delinquent in payment of such claims to the Town.

(c) No permit shall be granted to any nonmetallic mining site until the operator specifies in writing, how the noise exposure to adjoining and adjacent residents will be limited to the permissible sound levels incorporated under s. TCG 11.06(1)(a)5.

(d) Whenever the holder of any nonmetallic mining permit violates any provision of this ordinance, proceedings for the revocation of such permit shall be instituted. Before revocation of any nonmetallic mining permit, the Clerk shall give written notice to the operator, a minimum of 30 working days prior to the renewal date, of any alleged violations, charges, reasons for revocation, any written complaint, and/or a copy of any

motion for revocation made by the Town Board. The operator shall have an opportunity to be heard before the Town Board at the next scheduled Town Board meeting, following such notice.

(e) Any nonmetallic mining permit issued under the provisions of this ordinance may be revoked without further proceedings upon the conviction of the operator for a second or subsequent offense of any provision of this ordinance within a 12 month period.

(f) Whenever a permit is revoked under subsection 6(d), there shall be a 6 month waiting period before another permit may be granted for the same nonmetallic mining site and a 12 month period shall elapse before another permit may be granted to the operator whose permit was revoked.

(g) Before renewal of any nonmetallic mining permit is refused, the Clerk shall give written notice to the operator, a minimum of 30 working days prior to the renewal date, of any alleged violations, charges against them, reasons for non-renewal, any written complaint and/or a copy of any motion for non-renewal made by the Town Board. The operator shall have an opportunity to be heard before the Town Board at the next scheduled Town Board meeting, following such notice.

17.03 NONMETALLIC MINING OPERATION PLANS

(1) OPERATION PLAN CONTENTS

The operator shall submit to the Town Board, a detailed nonmetallic mining operation plan including, but not limited to:

(a) A site map showing the areas to be mined, all access roads, all rights-of-way, all structures, and all utilities, within one quarter (1/4) mile of the property lines of the site.

(b) Information about the site, including the zoning district of the site and all adjoining and adjacent parcels. If the nonmetallic mining site is subject to a County conditional use permit, information about the conditional use permit shall be provided including but not limited to the conditions contained in the conditional use permit and the date of expiration of the conditional use permit.

(c) Information about the Dane County Chapter 74 nonmetallic mining permit, including but not limited to the expiration date of the County permit, and conditions of the County permit and the type, amount and duration of any security posted under the County permit.

(d) A general description of the nonmetallic mining activities, including methods and procedures to be used.

(e) The hours of operation, and whether or not blasting will be conducted on-site.

(f) How the operator intends to limit the noise exposure to adjoining and adjacent residents, to the permissible sound levels incorporated under s. TCG 11.06.

(g) Identification of any hazardous area, as defined in s. TCG 17.04, within the nonmetallic mining site and information on how the operator intends to comply with the fencing requirements set forth in s. TCG 17.04.

(h) A timetable for completion of various stages of the nonmetallic mining operation.

(2) PERMIT AND OPERATION PLAN APPROVAL

In order to protect and promote the health, safety, and welfare of the general public and Town residents, the Town Board may require operators to limit their hours of operation, take measures to limit noise exposure to those levels set forth in s. TCG 11.06, install additional fencing or signs to comply with s. TCG 17.04, take measures to comply with the blasting requirements under s. TCG 18.01, or take other measures to adequately protect and promote public health, safety and welfare.

17.04 FENCING REQUIREMENTS

(1) DEFINITIONS

The following definitions are applicable to this section 17.04:

(a) "Fence" means a fixed barrier which shall not be less than 4 feet in height, and shall be constructed of welded wire, or similar materials which would provide similar strength, and shall have openings no greater than that found in a woven wire fence that meet the specifications of the Wisconsin department of transportation (DOT) for right-of-way fencing. A current copy of DOT standard detail drawing 15 B 1-7(a) is attached as Appendix 17-A, with the same force and effect as if it were fully reprinted herein.

(b) "Gate" means a rigid, movable barrier which shall not be less than 4 feet in height, and shall be constructed of sturdy materials which would provide similar strength and design as that found in an agricultural pipe gate.

(c) "Hazardous area" means any area whose natural topography has been altered by the activities of the landowner, lessee, tenant, or other person, either now or prior to the effective date of this ordinance, such that a slope of 2:1 or steeper, exists a distance of at least 10 feet along the top of the slope and the overall height of the slope is more than 8 feet.

(2) FENCING REQUIREMENTS

(a) Any operator or other landowner or person who has created a hazardous area on any land within the Town (including but not limited to a nonmetallic mining site), shall erect a fence around the hazardous area within 30 days from the effective date of this ordinance. The fence shall be posted with "warning" signs that meet, or exceed, the sign posting specifications under s. 943.13(2)(a), Stats.

(b) All fencing shall be erected and maintained no less than 10 feet from the top edge of a slope described in (1)(c) and be of sufficient length and contour to effectively obstruct access to the hazardous area, along the top edge of the slope.

(c) A gate shall be erected across all access roads, which shall be kept closed and locked with a padlock, or similar device, whenever there is no authorized activity being conducted on the site.

17.05 REGULATION OF BLASTING

(1) **BLASTING REQUIREMENTS**

(a) No person may use any amount of explosives regulated under Wis. Admin Code ch. COMM 7, within the Town limits without first obtaining a blasting permit from the Town Clerk. The Clerk shall only issue a permit in accordance with the provisions of s. TCG 18.01.

(b) In addition to the requirements of this ordinance, all applicable regulations of the Wisconsin Department of Commerce (COMM), Wisconsin Department of Natural Resources (DNR), and all applicable federal laws, standards and rules are hereby adopted and made a part of this ordinance with the same force and effect as if they were fully reprinted herein, with the exception of any penalty provision.

3. Chapter 18 shall be amended as follows:

All ordinance references to Wisconsin Admin. Code Chapter ILHR 7, ILHR 10, ILHR 14 or the Department of Industry Labor and Human Relations are amended to reference Wisconsin Admin. Code Chapter COMM 7, COMM 10 and COMM 14 and any and all amendments thereto and the Department of Commerce Respectively.

Adopted this 20th day of December, 2004

Kris Hampton, Town Chair

ATTEST:

Kim Banigan, Town Clerk

Approved as to form this
_____ day of _____, _____.

Constance L. Anderson, Esq.
Cottage Grove Town Attorney
Gregory D. Murray, Esq.
Cottage Grove Assistant Town Attorney