

TOWN OF COTTAGE GROVE - CODE OF ORDINANCES

CHAPTER 17 - NONMETLALIC MINING SITES

17.01 NONMETALLIC MINING REGULATION

(1) AUTHORITY AND PURPOSE

(a) Pursuant to the provisions of § 60.22(3), Wis. 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 Ch. 295, Wis. Stats. or under Wis. Admin. Code NR 135. This TCG Chapter is not a nonmetallic mining reclamation ordinance and the Town is not exercising its authority under § 295.14, Wis. Stats. 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 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 § 295.11(3), Wis. Stats.
- (b) "Nonmetallic mining reclamation" has the meaning specified in § 295.11(4), Wis. Stats.
- (c) "Nonmetallic mining site" has the meaning specified in § 295.11 (6), Wis. Stats.
- (d) "Operator" has the meaning specified in § 295.11(7), Wis. 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, including un-reclaimed portions of a nonmetallic mining site that relate to nonmetallic mining that occurred before the effective date of this section.

(b) Notwithstanding § 13.48(13), Wis. Stats., the provisions of this ordinance shall apply to all nonmetallic mining within the Town operated for the benefit or use of the state or any state agency, board, commission, department, or 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.

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- (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 Ch. 293, Wis. Stats.
- (g) Any activities required to prepare, operate or close a solid waste disposal facility under subchs. II to IV of Ch. 289, Wis. Stats., or a hazardous waste disposal facility under Ch. 291, Wis. 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.

(5) SEVERABILITY AND SAVINGS CLAUSE.

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 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, set by resolution of the Town Board, has been paid to the Town and the operation plan specified in s. TCG § 17.03 has been received by the Clerk. This fee shall be in addition to any fee specified in s. TCG § 15.19(1) if the application requires a change of land use.

(2) BOARD REVIEW AND PUBLIC HEARING

- (a) Upon receipt of an application, the Town Board may request the applicant to submit

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additional information if the Town Board determines that the application is incomplete. The Town Board may retain the services of an engineering firm or other qualified person with appropriate expertise (“Retained Expert”) to review the application and report to the Town Board whether additional information is required for review of the application and to determine whether the application meets the standards of this Chapter. If the Town Board determines that additional expertise is required or will provide valuable assistance to the Board in its review of the application, the Town shall give written notice to the applicant of the estimated additional administrative fee to be charged beyond the base administrative fee to cover the cost of the services of any such Retained Expert. The estimated additional fee shall be paid before the additional review is undertaken. If the amount of the final administrative fee exceeds the estimated fee, the applicant shall pay the additional amount within 30 days of invoicing by the Town. Any permit issued shall be conditioned upon the payment of all administrative fees when due. If the final administrative fee is less than the estimated amount, the overpayment shall be refunded to the applicant.

(b) Once an application is complete and any report by a Retained Expert has been completed the Town Clerk shall place the application on the agenda for the next regular meeting of the Town Board. If a special meeting is warranted, the applicant shall pay the Town’s cost incurred for the special meeting. The Town Board shall set a date for a public hearing and give public notice at least 15 days prior to the date scheduled for the hearing. In the case of an initial application, the Town Clerk shall provide notice to the owners of any property within 1/2 mile of the proposed mining site regardless of whether there is a residence or structure on the property. In the case of a renewal application without change from the prior year, the Town Clerk may provide notice to the owners of any property as deemed appropriate in the public interest. At the public hearing, the Town Board shall take public comment on the proposed permit.

Following the public hearing, the Town Board may take immediate action or set a date for the meeting at which time they shall make a final decision on the application. The Town Board shall grant the permit if it determines that the operation of the mine will be consistent with the purpose of this Chapter and will comply with the minimum standards set forth in this Chapter and does not create adverse cumulative impacts on the Town’s public health, safety and welfare. If the Town Board determines that the operation of the mine will be inconsistent with the purpose of this Chapter, will not comply with the minimum standards set forth in this Chapter or will create adverse cumulative impacts on the Town’s public health, safety and welfare, it may deny the permit. In order to protect and promote the health, safety and welfare of the general public and Town residents, the Town Board may require permittees 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. A permit may be approved, conditionally approved or denied subject to such measures and requirements.

(3) PERMIT REQUIRED

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

(b) The Town Clerk shall send a notice of renewal, along with a blank application form, to permit holders annually no later than April 1 by certified mail, return receipt requested.

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(4) FEES

A fee, set by resolution of the Town Board, shall accompany each application for a nonmetallic mining permit. The fee shall be paid to the Town Treasurer in US currency, money order, or check payable to: the Town of Cottage Grove. An itemized receipt shall be provided for all currency received. 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.

(5) 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) The Town Board, on its own motion or following due review and investigation of a written complaint, may revoke a nonmetallic mining permit for any violation of provisions or requirements of this ordinance or of other applicable state and federal law. 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) Whenever a permit is revoked under subsection 17.02(5)(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.

(f) Before renewal of any nonmetallic mining permit is refused, the Town 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:

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- (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 Ch. 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.

17.04 FENCING REQUIREMENTS

(1) DEFINITIONS

The following definitions are applicable to this section:

- (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-a is attached as Appendix 17-A (available in the Clerk's Office), 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.

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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.