

**TOWN OF GRANT  
DUNN COUNTY, WISCONSIN**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE TO REGULATE NONMETALLIC MINING & EXPLORATION**

**WHEREAS**, towns having adopted village powers have the authority to regulate mining and mining-related exploration activities under Wis. Stats. §§ 60.10(2)(c) & 61.34, in order to promote and protect public health, safety, and general welfare; and

**WHEREAS**, the Town of Grant ("Town") has adopted village powers and is concerned about the potential impacts of nonmetallic mining and mining-related exploration activities within the Town, and the Town board desires to regulate such activities in order to protect the public health, safety, and general welfare of Town residents and property owners.

**NOW, THEREFORE, BE IT RESOLVED**, that the Town board hereby enacts this Ordinance, as follows:

**SECTION 1: PREAMBLE**

(1) The purpose of this Ordinance is to promote the health, safety, prosperity, aesthetics, and general welfare of the people and communities within the Town of Grant ("Town"), Dunn County, Wisconsin, and set forth the rules and procedures for this municipality regarding nonmetallic mining and exploration within the Town. This ordinance is adopted pursuant to the Town's village and police powers under Wis. Stat. §§ 60.10(2)(c) & 61.34. This Ordinance is based on the Town of Cooks Valley Nonmetallic Mining Ordinance, which was upheld as a licensing ordinance by the Wisconsin Supreme Court in *Zwiefelhofer v. Town of Cooks Valley*, 2012 WI 7, 338 Wis. 2d 488, 809 N.W.2d 362 (Wis. 2012). This ordinance replaces and supersedes the "Town of Grant Nonmetallic Mine Operator's Licenses" ordinance, Chapter 17; the "Town of Grant Blasting Ordinance"; and the Town of Grant "Property Value Guaranty" policy. However, the provisions of those ordinances may be used as policy guidance by the Town in its administration and implementation of this Ordinance.

**SECTION 2: INTENT**

(1) The general intent of this subchapter is to regulate nonmetallic mineral exploration activities, and the location, construction, installation, alteration, design, operation and use of all nonmetallic mines, so as to protect the health of residents and transients; secure safety from disease and pestilence; further the appropriate use and conservation of land and water resources; preserve and promote the administration and enforcement of this subchapter and provide penalties for its violations.



### **SECTION 3: INTERPRETATION**

(1) In their interpretation and application, the provisions of this subchapter shall be held to be minimum requirements and shall be liberally construed in favor of the Town and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.

### **SECTION 4: DEFINITIONS**

(1) *Metallic Mining & Exploration* means exploration, operations or activities for the commercial extraction from the earth of merchantable metallic minerals or the exploration or prospecting for such minerals and includes operations, processes or activities related to that extraction or exploration.

(2) *Nonmetallic Mining & Exploration* means all of the following:

(a) Exploration, operations or activities at a nonmetallic mining site for the extraction from the earth of mineral aggregates or nonmetallic minerals for sale or use by the operator. Nonmetallic mining and exploration includes use of mining equipment or techniques to remove materials from the in-place nonmetallic mineral deposit, including drilling and blasting, as well as associated activities such as excavation, grading and dredging, whether for exploration or ongoing mining operations. Nonmetallic mining and exploration does not include: (i) removal from the surface of the earth of products or commodities that contain only minor or incidental amounts of nonmetallic minerals, such as commercial sod, agricultural crops, ornamental or garden plants, forest products, Christmas trees or plant nursery stock; and (ii) removal of minor or incidental amounts of soil or nonmetallic minerals from the earth for use as fill either on or off the subject property.

(b) Processes carried out for purposes of exploration, and processes carried out at a nonmetallic mining mine or site that are related to the preparation or processing of the mineral aggregates or nonmetallic minerals obtained from the nonmetallic mining site. These processes include, but are not limited to drilling exploratory boreholes, mining activities, stockpiling of materials, blending mineral aggregates or nonmetallic minerals with other mineral aggregates or nonmetallic minerals, blasting, grading, crushing, screening, scalping and dewatering.

### **SECTION 5: NONMETALLIC MINING & EXPLORATION**

(1) Nonmetallic mining and exploration in the Town shall be allowed only as provided for under this ordinance.

(2) The applicant shall apply to the Town for a nonmetallic mining or exploration permit prior to conducting any nonmetallic mining exploration or nonmetallic mining operations within the Town, including construction of any exploration or mining-related buildings, structures, access roads or other facilities in the Town. The application shall be submitted on a form provided to the applicant by the Town Clerk, a copy of which is attached hereto as Appendix A.



(3) The Town Board shall be the sole determining body of whether to issue the permit, after a public hearing has been held by the Town Board, with notice given by U.S. Mail to all adjoining landowners to the proposed exploration sites or nonmetallic mining operation. The Town board shall grant the permit, either with or without conditions, if it is determined that the proposed exploration or the development and operation of the proposed nonmetallic mine will be in the best interests of the citizens of the Town, and will be consistent with the protection of public health, safety and general welfare.

(4) The Town permit shall be void if the permittee violates any conditions of the permit or any conditions of any required Federal, State or County permits.

## **SECTION 6: PROCEDURES**

(1) The applicant shall complete a Town of Grant Nonmetallic Mining & Exploration Permit Application (Appendix A) and pay the required application fee of \$500.00 to the Town, at the time the application is submitted to the Town Clerk. In addition to the required application fee, within thirty (30) days following submission of the application to the Town Clerk, but before the application is reviewed or otherwise considered by the Town board, the applicant shall be required to enter into an agreement with the Town under which the applicant shall agree to compensate the Town for all legal services and expert consulting expenses which may be reasonably incurred by the Town as part of its review and processing of the application, regardless of whether or not the application for a permit is subsequently approved or denied by the Town.

(2) After receiving the application and the application fee, the Town Clerk shall mail a copy of the application to all adjoining landowners to the proposed exploration sites or nonmetallic mining operation with the date and time of the next Town Board Meeting.

(3) The Clerk shall then place the application on the agenda for the next Town board meeting, at which time the Town board shall conduct an initial review of the application and schedule further proceedings for review and consideration of the application by the Town. Such proceedings shall include: (a) development of a proposed agreement between the Town and the applicant for the applicant to compensate the Town for all legal services and expert consulting expenses which may be reasonably incurred by the Town as part of its review and processing of the application, regardless of whether or not the application for a permit is subsequently approved or denied by the Town; (b) hiring of legal and technical experts to review the application and advise the Town; (c) determination of the completeness of the application; (d) the scheduling of a public hearing before the Town board on the application once it has been determined to be complete by the Town board; and (e) the scheduling of a special meeting for the Town Board to decide whether or not to grant the permit and, if so, what conditions shall be required.

(4) At the public hearing held by the Town board, the Town board shall consider the advice and recommendations of any legal or technical experts it has retained to review the application, the position of the applicant, and public input on the proposed exploration activities or proposed mining operations. Before making a decision on the application, the Town board shall determine whether the application is complete, and whether the applicant has applied for or received any required Federal, State, and County permits for the proposed exploration or mining activities or operations.



(5) The Town board shall grant the permit, either with or without conditions, if it is determined that the proposed exploration activities or the proposed mining activities and operations will be in the best interests of the citizens of the Town, and will be consistent with the protection of public health, safety and general welfare.

(6) The Town board may conditionally approve the permit and may attach conditions to protect public health and safety and promote the general welfare of the Town. Such conditions may include, but are not limited to:

- (a) Restrictions and proof of financial security for proper abandonment and closure of exploration borings;
- (b) Mine site reclamation;
- (c) Restrictive provisions and proof of financial security for town road maintenance and repair;
- (d) Restrictions on hours of operation;
- (e) Restrictions on truck and traffic volume into and out of the exploration or mine site;
- (f) Restrictions on blasting and use of explosives, including requiring the applicant to follow a blasting plan approved by the Town board;
- (g) Restrictions to protect groundwater and surface water quantity and quality;
- (h) Restrictions to safeguard public and private drinking and agricultural wells;
- (i) Restrictions to control air emissions and dust from proposed exploration or proposed mining activities or operations;
- (j) Restrictions to protect the property rights and property values of other public and private property owners who may be affected by the proposed exploration or mining activities or operations; and
- (k) Any other restrictions deemed necessary or appropriate by the Town board to protect public health and safety and promote the general welfare of the Town and its citizens.

## **SECTION 7: EXCEPTIONS FROM ORDINANCE**

(1) In its discretion, the Town board may negotiate and enter into an exploration or nonmetallic mining operation agreement with a permit applicant, in lieu of issuing a permit under this Ordinance, if the Town board has first considered a formal permit application under the procedures set forth in Section 6, above, has held a public hearing on the proposed



agreement, and has determined that the proposed agreement will adequately protect public health and safety and promote the general welfare of Town residents and property owners.

(2) A nonmetallic mining permit is not required from the Town for nonmetallic mines in existence prior to the effective date of this ordinance or for the activities listed in Wis. Admin Code § NR 135.02(3). However, if a pre-existing nonmetallic mine is expanded after the effective date of this ordinance the expansion shall be subject to the requirements of this Ordinance.

#### **SECTION 8: SEVERABILITY**

(1) If any section, sentence, clause or phrase of this ordinance, or if any section, sentence, clause or phrase of any permit issued by the Town pursuant to this ordinance, is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance, or of any other section, sentence, clause or phrase of any permit issued by the Town pursuant to this ordinance.

#### **SECTION 9: ENFORCEMENT & PENALTIES**

(1) Any violation of this ordinance shall be punishable by a forfeiture of not less than \$100.00 or more than \$5,000.00 per day for every day of violation of this ordinance, plus the costs of prosecution, including the Town's attorney fees and costs, for each and every violation. Each day of violation shall constitute a separate offense. In addition, the Town board may: (a) issue a notice of violation and order that specifies required remedial action, which may include a stop work order; (b) suspend or revoke the permit; or (c) impose any other available enforcement remedy.

#### **SECTION 10: EFFECTIVE DATE**

(1) This ordinance shall take effect upon passage and publication.

#### **SECTION 11: PUBLICATION**

(1) The Town Clerk shall properly post or publish this ordinance as required under Wis. Stat. § 60.80.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

Signatures of Town Officials:

Town Chairman: \_\_\_\_\_

Town Supervisor: \_\_\_\_\_

Town Supervisor: \_\_\_\_\_

Town Clerk: \_\_\_\_\_