

TOWN OF EATON MUNICIPAL CODE
REGULATION OF NONMETALLIC MINING
TOWN OF EATON, BROWN COUNTY, WISCONSIN

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SEC. 2-1 – PURPOSE OF CHAPTER

Nonmetallic mining is recognized as an important industry which contributes to the Town’s economic and social well-being but which risks damage to the long-term physical environment and the tax base of the Town. It is the purpose of this Chapter to establish regulations for nonmetallic mining and site reclamation that will protect the environment and the tax base both during and after the conduct of mining operations.

SEC. 2-2 – DEFINITIONS

In this Chapter, terms shall mean the following:

- a. “Abandonment of operations” means the cessation of nonmetallic mining operations for more than three hundred sixty (360) consecutive days where the cessation is not specifically set forth in an operator’s application, operation, or reclamation plan or permit, or by other written request deemed sufficient by the Town. Abandonment of operations does not include the cessation of activities due to the labor strikes or natural disasters.
- b. “Town” means the Town of Eaton.
- c. “Enlargement” means any horizontal or vertical increase beyond dimensions of the original application for the project site and shall be subject to the diminishing assets rule.

- d. "Environmental pollution" means the contaminating or rendering unclean or impure the air, land, or waters of the state or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal, or plant life.
- e. "Modification" means any vertical or horizontal increase or decrease applicable to the dimensions of the original application for the project site.
- f. "Nonmetallic mining" or "nonmetallic mining operation" means operations or activities for the extraction from the earth of mineral aggregates such as stone, sand, gravel, and nonmetallic mineral, such as asbestos, beryl, clay, feldspar, peat, talc, topsoil-related operations or activities, such as excavation, grading, or dredging, if the purpose of those operations or activities is the extraction of mineral aggregates and nonmetallic minerals and related processes, such as crushing, screening, scalping, dewatering, and blending. Nonmetallic mining or nonmetallic mining operation does not include or allow the following activities or uses by way of illustration, which include, but are not limited to, manufacture of concrete building blocks or other similar products, asphalt, or hot blacktop mixing and production of ready-mix concrete.
- g. "Nonmetallic mining refuse" means waste soil, rock, mineral, water, vegetation, and other waste material resulting from a nonmetallic mining operation. This term does not include merchantable byproducts resulting directly from or displaced by the nonmetallic mining operation.
- h. "Nonmetallic mining site" or "project site" or "site" means the location where a nonmetallic mining operation is proposed to be conducted or is conducted, including all surface areas from which minerals are removed, related storage and processing areas, areas where nonmetallic mining refuse is deposited, and areas disturbed by the nonmetallic mining operation by activities, such as the construction or improvement of roads or haulage-ways.
- i. "Operator" means any person who is engaged in a nonmetallic mining operation or nonmetallic mining site reclamation or who applies for or holds a nonmetallic mining permit issued under a nonmetallic mining reclamation ordinance, whether individually, jointly, or through subsidiaries, agents, employees, contractors, or subcontractors.
- j. "Parties of interest" means the owner and operator of a proposed or existing nonmetallic mining site and all owners of property located within 4,000 feet (including neighboring municipalities and residents thereof) of the boundaries of a proposed or existing nonmetallic mining site.
- k. "Permit" means any permit which may be required under this section of an operator as a condition precedent to commencing or continuing nonmetallic mining at a project site.

- l. "Reclamation" means the rehabilitation of a nonmetallic mining site, including, but not necessarily including and not limited to, removal of nonmetallic mining refuse, grading of the site, replacement of topsoil, stabilization of soil conditions, establishment of vegetative cover, control of surface water and groundwater, prevention of environmental pollution, construction of fences, and, if practical, restoration of plant, fish, and wildlife habitat.
- m. "Replacement of topsoil" means the replacement of the topsoil which was removed and disturbed by a nonmetallic mining operation or the provision and placement of soil which is at least as adequate, in the opinion of the Town, as the topsoil that was removed or disturbed for the purposes of providing adequate vegetative cover and stabilization of soil conditions.
- n. "Riprap" means a quantity of durable stones or concrete pieces of varying size and shape placed as a protective layer over soil in such a manner that the smaller pieces fill the spaces between the larger pieces. Concrete pieces are less desirable than stones for this use, and those with exposed reinforcing rods shall not be used.
- o. "Site plan" means a detailed map, including, but not limited to, location, elevation, and sizes of excavation site, materials storage sites, nonmetallic mining refuse storage, settlement pond, size of scale-house and/or office, fuel storage, water pumping station, etc.
- p. "Topsoil" means that material (normally the A and upper part of the B horizon) which, based upon the official national cooperative soil survey, is acceptable for re-spreading on the surface of regarded areas to provide a medium which sustains a dense plant growth capable of preventing wind and water erosion of the topsoil and other materials beneath.
- q. "Town's consultants" means independent firm(s) retained or employed by the Town to perform geological, hydro geological, engineering, soils, well, or other environmental analysis, testing, or investigation.
- r. "Town Quarry Advisory Committee" consisting of one (1) representative from each of the nonmetallic mining operations, one (1) representative for blasting operators, one (1) resident, one (1) member of the Town Board, and one (1) member of the Town Plan Commission which will meet to discuss concerns and issues relating to nonmetallic mining operations and will make advisory recommendations to the Town Board.

SEC. 2-3 APPLICABILITY OF CHAPTER

This chapter is applicable to all nonmetallic mining sites within the Town of Eaton. This chapter applies to any portion of a nonmetallic mining site, including unreclaimed portions of a site, which was mined prior to the effective date of this chapter.

SEC. 2-4 EXEMPT ACTIVITIES

This chapter does not apply to the following activities:

- a. Excavations or grading by a person solely for domestic use at his or her residence.
- b. Excavations or grading conducted for highway construction purposes within the highway right-of-way.
- c. Grading conducted for farming, preparing a construction site, or restoring land following a flood or natural disaster.
- d. Excavations for building construction purposes.
- e. Any mining operation, the reclamation of which is required in a permit obtained under Chapter 293, Wis. Stats.
- f. Any activities conducted at a solid or hazardous waste disposal site required to prepare, operate, or close a solid waste disposal facility under subchapters II to IV of Chapter 289, Wis. Stats., or a hazardous waste disposal facility under Chapter 291, Wis. Stats. However, this nonmetallic mining ordinance does not apply to activities related to solid or hazardous waste disposal, which are conducted at a nonmetallic mining site separate from the solid or hazardous waste disposal facility, such as activities to obtain nonmetallic minerals to be used for lining, capping, covering, or constructing berms, dikes, or roads.

SEC. 2-5 APPLICATIONS FOR PERMITS

- a. General Requirements

An operator shall obtain a nonmetallic mining permit prior to engaging in nonmetallic mining or the enlargement of a site. Such permit applications are subject to public hearing before the Town Board. Permits shall be denied if the Town Board finds that the project does not conform with the standards set forth in this chapter or if the applicant has failed or continues to fail to comply with this section. If the applicant has a history of violations while operating this type of project, a probationary permit may be issued at the sole discretion of the Town Board.

b. Application

The application for a permit shall be submitted to the Town Clerk on forms provided by the Town. The application for a permit shall be signed by the site owner and the operator and shall be accompanied by information that shall include, but not be limited to, the following:

1. General Information

The name and address of the site owner and operator.

2. Lease(s)

A signed copy of the lease(s) which authorizes the operator to enter upon the site owner's land for the purpose of nonmetallic mining. The expiration date of the lease shall clearly be indicated thereon.

3. Legal Description

A legal description and survey map of the tracts of land to be involved and affected by the proposed operation and the approximate total number of acres involved.

4. General Map

Five (5) copies of a general map which shall be drawn at a scale of no less than one (1) inch equals four hundred (400) feet and shall include the following:

- a. Property boundaries of the operator's owned and/or leased land consistent with the legal description for the premises.
- b. Location and names of all known streams, roads, railroads, utility lines on or immediately adjacent to the site.
- c. Location of all structures owned by parties in interest within at least 4,000 feet.
- d. Names and addresses of all Parties in Interest.
- e. Boundaries for the site, including site plan.
- f. Location and description of mining site boundary stakes and permanent reference point.
- g. Zoning of the site.
- h. Existing and proposed drainage within and without the site of operations to a distance of five hundred (500) feet reflecting the handling of all waters, natural, pumped, surface, and identify wetlands thereon.
- i. Locate and identify setbacks.
- j. The location and description of any solid waste disposal sites, landfills, or refuse dump sites within one (1) mile of the site.

5. Operation Plan

The operation plan shall include information about the site, a legal description of the proposed nonmetallic mining operation, methods and procedures to be used in mining the site, including the following:

- a. Type of mining, processing, and transportation equipment to be used.
- b. Type of materials to be extracted.
- c. Primary travel routes to be used to transport material to processing plants or markets.
- d. Measures to be taken to control noise, dust, and vibrations from the operations and/or a written explanation of why such measures are not needed.
- e. If explosives are to be used in the operation, a copy of the Blaster's Explosive Use Plan should be on file with the Town.
- f. A statement that the applicant has complied with all Wisconsin State Statutes, Administrative Code provisions, and Town and/or County Ordinances regulating erosion control, wetlands, navigable streams, air quality, zoning, water drainage and discharge from the site of operation and that all required plans and permits have been submitted and/or obtained by the applicant.

6. Reclamation Plan

The applicant shall submit a copy of its nonmetallic mining reclamation plan, including maps, information about the site, a description of the proposed reclamation, including methods and procedures to be used and a proposed timetable for completion of various stages of the reclamation of the nonmetallic mining site. All nonmetallic mining reclamations shall be in accord with Chapter 295 Stats. and Wisconsin Administrative Code NR 135, as well as any additional requirements the Town Board may determine in view of any particular or special condition which the Town Board, in the exercise of its discretion, may reasonably require.

7. Other Information

The Town Board may require the submittal of such other information as may be necessary to determine the nature of the nonmetallic mining operation and proposed reclamation and the effect on the surrounding area. The Town Board may waive portions of the specified information if it is satisfied that, because of the nature or method of the operation, such information is not relevant or is unnecessary to a full and proper evaluation of the application. In determining what information shall be waived, the Town Board shall take into account, among other things, the nature of the applicant's operation, whether the operation is a legally pre-existing operation, the conditions upon

the nonmetallic mining site, and any condition upon any property outside the nonmetallic mining site which is or may be affected by the nonmetallic mining operation. It shall be the obligation of the applicant to request any such waiver. Such request shall set forth the justification for such waiver.

SEC. 2-6 PERMIT APPROVAL AND APPEAL PROCESS

- a. Standards for Evaluation and Approval. The Town Board, in conjunction with the Town's consultants, shall review the site plan, existing and proposed structures, architectural plans, neighboring land and water uses, parking areas, driveway locations, highway access, traffic generation and circulation, drainage, the proposed operation, the effects of the proposed use, structure, operation and improvement upon flood damage protection, water quality, shoreland cover, natural beauty and wildlife habitat, quality of life of the neighborhood and Town, and any other pertinent requirements deemed necessary by the Town Board so as to eliminate, alleviate, or control any unreasonable hazard, danger, harm, risk, or nuisance that exists or could develop as a result of the operation and reclamation for which the application is made. The Town Board shall consider whether or not the applicant is applying as to a legal pre-existing operation and use and any legally protectable rights which may have accrued to such applicant as a result thereof.
- b. Public Hearing
 1. Within thirty (30) days after receipt of a complete permit application and a recommendation from the Town Zoning and Planning Board, the Town Clerk shall schedule a public hearing on the application before the Town Board; the application shall be submitted to the Zoning and Planning Board and the Town's consultants for its recommendation prior to Town Board action.
 2. Notice of the aforementioned public hearing shall be published by the applicant as a Class 2 notice in a newspaper of general circulation within the Town of Eaton. In addition, notice of said public hearing shall be mailed by the applicant, by certified mail, to the last known address of all owners of property within one-half (1/2) mile of the subject property. Failure to receive notice shall not invalidate any action taken by the Town Board.

3. If the Town Board determines in its reasonable discretion that it requires Town consultants to perform services and provide information relevant to the approval or denial of a permit application, the applicant shall be notified not less than ten (10) days in advance of any such retention or hiring by the Town Board. If the operator delivers a written request for a due process hearing concerning such retention or hiring, then a hearing before the Town Board shall be conducted. The Town Board's notice of intent to retain Town consultants shall state the general reason(s) and purpose(s) for such retention and hiring; the identity of the firm(s) to be retained or hired, the estimated duration of such retention or hiring; the estimated cost(s) and expense(s) to be charged back to the operator; and such other information as may be available which, in summary, further describes the situation. The Town's selection of a Town consultant shall be pursuant to the solicitation of bids by telephone, mail, or publication. The Town shall select the lowest responsible bidder as the Town's consultant. The applicant shall deposit the Town consultant's bid fee total with the Town Treasurer before any Town consultant fees are incurred. The applicant, regardless of whether the permit is granted or denied, shall reimburse the Town for the Town consultant fees and any related costs the Town incurs.
4. At the hearing on an application for a nonmetallic mining permit, the Town Board shall hear and receive any evidence or sworn testimony presented by the applicant or an authorized agent. At the conclusion of the applicant's presentation, the Town Board shall hear first any public comments from those in support of the application, then from those in opposition to the application, and finally the recommendation of the Planning Commission and the Town's consultants. The applicant shall be given an opportunity to respond to any adverse comments, evidence, or recommendations.
5. Approval or Denial. Within thirty (30) days after the hearing, the Town Board shall grant, deny, or grant with modification the application based upon specific written and recorded findings and conclusions. The Town Board may grant an application conditioned upon meeting certain operational and reclamation provisions and standards, which shall not be less stringent than the minimum standards hereinafter set forth. In deciding upon an application for a legally pre-existing operation, the Town Board shall take into account the pre-existing nature and circumstances of the operation.

6. Appeal. Appeals from the decision of the Town Board in granting or denying a license shall be initiated as an action-seeking certiorari pursuant to Section 801.02(5), Wisconsin Statutes, and shall be commenced in the Circuit Court not later than forty-five (45) days from the date the Town Board issues its oral determination upon the application, regardless of the written embodiment of that decision which may thereafter be issued by the Town Board. Notice of the applicant's right of appeal and the time limits described in this section shall be given to the applicant in writing at the time the Town Board announces its decision to grant or deny a license as described herein.

SEC. 2-7 MINIMUM RECLAMATION STANDARDS

Any permit granted shall be subject to the provisions and requirements of Chapter 295, Wis. Stats., and NR 135 of the Wisconsin Administrative Code.

SEC. 2-8 STANDARDS APPLIED TO ALL PERMITS

a. Right of Access

The filing of an application shall grant the Town and its officers, consultants, and agents the right of access onto the site and contiguous lands owned or leased by the applicant for the purpose of inspecting the site and adjacent lands for pre-permit issuance inspections, for compliance with the permit if issued, and for any other purpose relative to this section. Except in emergencies, access shall be granted during normal business hours with reasonable notice to the operator. Inspectors shall report to the person in charge of the site and comply with established safety rules and regulations.

b. Conditions of Permit

After the issuance of a permit, all nonmetallic mining operations as a condition of their permit shall comply with all Wisconsin State Statutes, Administrative Code provisions, and Town/County ordinances regulating erosion control, wetlands, navigable streams, air quality, zoning, noise, traffic, motor vehicles, water quality, water drainage and discharge from the site of operation and that all required plans and permits have been submitted and/or obtained by the applicant and be conducted in a manner which does not create any public or private nuisance(s).

c. Failure to Open and Operate

Failure of an operator to take substantial steps to open and operate in a site during the initial permit period may be grounds for the Town Board to deny a request for renewal. Such denials may be appealed to the Circuit Court as provided in Section 2-6(b)(6).

d. Boundary Staking

All excavation and phase boundaries, if any, shall be staked or otherwise marked per the survey by the operator and inspected by the Town prior to commencing operations on a site. Stakes shall be made of steel consisting of at a minimum a two(2)-inch pipe. Stakes shall be placed on all corners of the site and additional stakes shall be placed every three hundred (300) feet between corner stakes. Stakes shall be set so they are at least five (5) feet above ground level and painted so they are visible.

e. Plans on Site

A copy of the plans and specifications, signed by the Town Board members approving the permit, shall be returned by the Town at the time of permit issuance and shall be kept on the project site throughout the entire excavation and reclamation period. A copy of the plans and specifications upon which the permit has been issued shall be kept by the Town Clerk.

f. Permit Period

Permits shall be granted for a one(1)-year period of time and shall expire on December 31. Permits shall be on a calendar-year basis. A permit first granted will expire on December 31 and shall be renewed, if at all, as of January 1 the following year.

g. Limits of Operation

Projects shall be limited to approved dimensions.

h. Conflicts with Other Regulations

It is the responsibility of the operator to obtain any local, state, or federal permits or approvals.

i. Compliance with Reclamation

The operator shall comply with progressive reclamation plans, if any, and final reclamation plans for the site.

j. Notification of Commencement and Cessation

The operator shall notify the Town in writing at least fifteen (15) days prior to initial nonmetallic mining operations and at least thirty (30) workdays prior to final completion of project reclamation. All phases within a site shall also comply with the notification requirements above. When a phase is complete, the operator shall

notify the Town Board or its designee for approval of the reclamation before entering the next phase.

k. Records of Operations

All records of the permittee regarding the conduct of the nonmetallic mining operation, which are reasonably needed for the proper monitoring and evaluation of the operation or the enforcement of this chapter, shall be subject to inspection by the Town Board or designee at all reasonable times, provided, however, that Town personnel, to the extent provided by law, shall take reasonable steps to prevent disclosure of records which the operator advises in writing contain privileged trade secret information.

l. Complaints of Violations

In the event of a complaint of a violation of this section, the plan of operation or the plan of reclamation, the permittee shall be notified thereof in writing by the Town Board or designee and shall respond to the Town Board or designee in writing within ten (1) working days of such notification. In the event the permittee shall fail to respond or shall deny any violation without reasonable grounds, the permittee shall be liable for the reasonable costs of investigation and pursuit of such complaint, including the cost of any experts and Town attorney fees and any hearing costs if after hearing it has been determined that there has been a permit violation.

m. Other Conditions

The Town may apply such other conditions or requirements as are necessary to ensure the proper operation and the progressive and final reclamation in a manner consistent with this section and to limit any adverse environmental impacts. Standards contained in Wisconsin Administrative Code Transportation 207 or in State of Wisconsin Department of Transportation Standards Specifications for Road and Bridge Construction may be applied to any appropriate aspect of this chapter.

n. Hours of Operation

6:00 a.m. - 6:00 p.m., Monday through Friday, April 1 to September 30

6:00 a.m. - 9:00 p.m., Monday through Friday, October 1 to March 31

6:00 a.m. – 3:00 p.m., Saturday, all year

These time parameters only restrict the operation of crushing equipment.

Maintenance and repair work, which includes the operation of small engines, may be done outside of these parameters. Additional hours of operation would be subject to approval of the Town Board. Blasting hours are governed by the Town of Eaton Explosives and Blasting Ordinance.

7:00 a.m. – 5:00 p.m., Monday through Friday, for drilling operations

o. Setbacks

The nonmetallic mining operation shall be set back a minimum of one hundred (100) feet from the right-of-way line of all highways, streets, or roads and all exterior property lines and a minimum of five hundred (500) feet to the nearest residence. Uses accessory to the nonmetallic mining operation, such as parking and loading areas and stockpiles of materials, except for landscaped berms, shall be set back a minimum of one hundred (100) feet from the right-of-way line of all highways, streets, or roads and from all property lines. Existing setbacks for those stone quarries in existence as of the effective date of this ordinance shall not be subject to this provision and shall be located and identified on the general map for the site. The setback requirements contained in this section will be applicable for any site enlargement.

p. Dust Control

Opacity limit for all fugitive emissions at the property line of the site shall comply with DNR requirements. Provided, however, the Town Board reserves the right to impose stricter requirements as to monitoring and abatement of such emissions.

pp. Dumping Prohibited

The owner and/or operator of a nonmetallic mining operation shall not itself, or allows others, to haul junk, rubbish, stumps, trees, salvage materials of any kind, including, but not limited to, concrete, fill, autos, trucks, or parts thereof into or outside of the nonmetallic mining site and property contiguous thereto, except for clean fill approved by the Department of Natural Resources and the Town Board. Clean fill shall be utilized on the nonmetallic mining site for reclamation purposes only and shall be described and identified to the Town Board as to its characteristics and qualities in writing by the operator when the operator seeks the Town Board's approval as provided herein.

q. Blasting Notification

Before any blasting operation may be conducted with the Town of Eaton, the company or operator shall give notice not less than five (5) days preceding any blasting, by telephone or hand delivered or faxed letter to the Town Chairman or Town Clerk, that the permittee will be conducting blasting operations during any

one-week period Monday through Friday and advising the name of the company and the blaster and the approximate dates, times, and location(s) of the blasting during the one-week period. The issuance of the notice required herein does not relieve the company or operator from its obligation to provide such other notices as may be required, pursuant to the permit or otherwise in the Town of Eaton Blasting Ordinance.

r. Conflict With This Ordinance, Wisconsin Statutes, or Regulations

The Town Board may, in its sole discretion, issue conditional use permits for individual nonmetallic mining projects that contain provisions specific to that individual project. If the provisions of the conditional use permit regulating environmental activities exceed the requirements of either this ordinance, applicable statutes, state DNR administrative code regulations, and/or any applicable federal regulations or statutes, the provisions of the conditional use permit shall control. If the provisions of the conditional use permit regulating environmental activities are less strict than those of this ordinance, applicable statutes, state DNR administrative code regulations, and/or administrative code provisions shall control to the extent that they exceed the provisions of the conditional use permit provisions. However, if the provisions of the conditional use permit that regulate non-environmental activities differ from those found in this ordinance, those provisions of the conditional use permit shall control. Examples of conditions which regulate non-environmental activities include, but are not limited to, hours of operation, setbacks, enforcement provisions, complaints of violations, records of operation, renewal of permit, inspection, and right of access.

SEC. 2-9 RENEWAL OF PERMIT

- a. Applications for permit renewal must be submitted in writing to the Town Clerk by October 31. Such applications shall comply with the provisions of this section but need not include any items previously submitted with a prior application for a permit for such site. Renewal applications may merely indicate no change in such items. Any previously submitted items that have been changed from the prior applications shall be resubmitted showing any such changes.
- b. No permit renewal shall be granted unless the project is in reasonable compliance with the terms of the existing permit.
- c. Permit renewals may be conditioned upon correction of any unanticipated environmental impacts occurring during the original or renewal permits.
- d. No public hearing shall be required to be held with respect to a renewal application unless the application provides for an enlargement of the previously approved site or otherwise provides for an alteration or change in the method of operations or reclamation previously approved, which might adversely effect the use or

enjoyment of nearby properties. Site enlargement shall be subject to all the provisions and procedures set forth in Section 2-6 of this ordinance.

- e. Any appeal from the Town Board's decision to renew or not to renew a permit shall be commenced and prosecuted as provided in Section 2-6(b)(6).

SEC. 2-10 EXISTING NONMETALLIC MINING OPERATIONS

All nonmetallic mining operations existing at the effective date of this chapter shall, within thirty (30) days of the effective date of this chapter, be provided with a copy of this section via certified mail. Within ninety (90) days of their receipt of this section, operators of existing nonmetallic mining operations shall submit the necessary plans to bring said operation into conformity with this chapter. Such period may be extended for an additional ninety (90) days upon review and approval by the Town Board of said written request for extension. Pending the receipt and review of a timely submitted application by the Town Board, the operation shall be permitted to continue the existing nonmetallic mining operation at the site for which an application was submitted. If a permit is denied, the applicant shall cease nonmetallic mining operations at such site. However, the applicant shall be given a reasonable period of time for the processing and removal of existing materials and/or stockpiles.

SEC. 2-11 PROJECT SITE MODIFICATION OR ENLARGEMENT

- a. Site Modification

An operator may apply for a modification or cancellation of a project permit or for a change in the reclamation plan for a project site. The application for the modification, cancellation, or change shall be submitted in writing by the operator and shall identify the site to be removed or affected by a change in the operation and reclamation plans.

- b. Transfer of Permit

When one (1) operator succeeds to the interest of another in an uncompleted site, the Town Board shall release the first operator of the responsibilities imposed by the permit, but only if:

1. Both operators are in compliance with the requirements and standards of this chapter.
2. The new operator assumes the responsibility of the former operator to complete the reclamation of the entire project site by a written, witnessed document and provides sufficient financial assurance therefore. The former operator will not be released from financial responsibility unless the financial assurance(s) provided by the new operator are equal to or greater than the financial assurance(s) attainable from the former operator.

c. Site Enlargement

Any proposed enlargement shall be processed as a new application pursuant to this chapter. All provisions of this section shall apply to the proposal.

SEC. 2-12 FEES

a. An application fee of One Thousand Dollars (\$1,000) hereunder shall accompany the application for an initial permit. A fee of One Thousand Dollars (\$1,000) hereunder, if no substantial alterations or changes are proposed to be made to the previously approved plans, shall accompany an application for a renewal permit. If substantial alterations or changes are proposed to be made to the previously approved plans, an additional fee of Five Hundred Dollars (\$500) shall accompany the application for the renewal permit. Permits are issued for a calendar year and expire on December 31 of the year issued.

b. In addition to the application fee, the applicant shall also pay along with the application fee a non-refundable lift fee based on the projected cubic yards of material the applicant expects to remove from the site during the period covered by the permit. The lift fee shall be based on the following schedule:

◀ 0 – 300 cubic yards	\$0.15/cubic yard
◀ 301 – 1,000 cubic yards	\$0.25 /cubic yard
◀ 1,001 – 2,500 cubic yards	\$0.30/cubic yard
◀ 2,501 – 10,000 cubic yards	\$0.33/cubic yard
◀ 10,001+ cubic yards	\$0.35/cubic yard

c. Cubic yardage projects shall be made by the applicant and shall be provided to the Town Board in writing attached to the license application. The applicant shall be responsible for reporting to the Town Board in writing at each license renewal the actual cubic yardage removed from the site and whether the actual cubic yardage removed deviated from the projected amount. This report shall accompany any application for a renewal permit. The Town Board reserves the right to obtain independent verification of the actual cubic yardage removed from the site. If the projected amount is less than the actual cubic yardage removed, the applicant may, at the Town Board's sole discretion, be required to make an additional payment to the Town for the shortfall as part of the renewal license application. This calculation for this shortfall payment shall be according to the schedule described in Sec. 2-12(b).

SEC. 2-13 INSPECTION

The Town Board or its designee may enter the premises of a nonmetallic mining site in the performance of its or their official duties or, pursuant to a special inspection warrant issued under Sec. 66.122, Wis. Stats., in order to inspect or record conditions upon the premises to act on any application hereunder, to ascertain compliance with this nonmetallic mining ordinance or to investigate any alleged violation. It shall be a condition of a permit issued hereunder that, upon request, such person shall be granted access to the premises during hours of operation for purposes of any such inspection, provided that applicable safety laws, rules, and regulations are adhered to.

SEC. 2-14 ENFORCEMENT AND PENALTIES

a. Enforcement

The following are criteria that the Town Board may consider for issuance, re-issuance, suspension, or revocation of a non-metallic mining permit:

1. Compliance with the reclamation standards established by the State of Wisconsin or any permit issued pursuant to this ordinance.
2. Submittal to the Town Board of the Town of Eaton a nonmetallic mining operation plan and compliance with the operation plan.
3. Submittal to the Town Board of the Town of Eaton a nonmetallic mining reclamation plan and compliance with the reclamation plan as required by state law or in any permit granted pursuant to the ordinance.
4. Maintaining the financial assurance required by the Town Board of the Town of Eaton, pursuant to Section 66.038(4)(e), Wis. Stats.
5. Compliance with the operational hours of operation of the nonmetallic mining operation.
6. Installation, provision, and maintenance of adequate and necessary physical structures, equipment, and operational controls as determined by the Town Board to prevent public nuisances and to protect the public health and safety to persons residing near the nonmetallic mining operation or persons entering the nonmetallic mining operation, including public nuisances associated with noise, dust, odors, fires, explosions, water pollution, air pollution, and erosion.
7. Attempts made by the permittee or party in interest to comply with the provisions of this ordinance.
8. Consideration of extenuating circumstances and matters beyond the control of the permittee or party in interest.

b. Suspension/Revocation

Unless expressly provided herein or by other Town of Eaton Ordinance provisions, the nonmetallic mining permit may be suspended or revoked for cause for noncompliance with this or any ordinance after the proper hearing noted below, unless in an emergency condition determined by the Town Board wherein the

license, registration, or permit can be suspended temporarily for a set time period. Prior to any action for suspension or revocation, the Town Board must, by the Town Clerk, receive a verified complaint concerning the permittee. The following persons may file a verified complaint with the Town Board:

1. The Town Chair
2. The Town Clerk
3. A Town Supervisor
4. The Town Zoning Administrator/Building Inspector
5. The Town Constable
6. Any Town of Eaton Resident
7. A Landowner within 4,000 feet of the blasting site

The Town Board will make a preliminary determination of the allegations of the complaint are of sufficient magnitude, importance, or otherwise of such a nature as to require a formal evidentiary hearing.

The person subject to charges for violation of any such Town Ordinance or any violation of a condition of any other permit issued to such nonmetallic mine shall be provided a copy of the verified complaint and notice of hearing before the Town Board. The hearing shall be required to be not less than ten (10) days nor more than thirty (30) days after receipt of notice, unless stipulated in writing by the Town Board of the Town of Eaton and the person subject to charges.

The person subject to charges for violation of any Town Ordinance or any other violation of a condition of any other nonmetallic mining-related permit shall be entitled to the following:

1. Representation by legal counsel
2. Right to present and cross-examine witnesses
3. Right to subpoena witnesses by the Town Chair issuing subpoenas to compel attendance of witnesses

The Town Board may, after the hearing for any person previously issued a nonmetallic mining permit by the Town Board pursuant to this ordinance, act as follows:

1. Revoke the permit as a final decision
2. Suspend the permit for a term of days, weeks, or months certain as a final decision
3. Request additional information as an interim decision prior to taking future action.
4. Take no action on the permit as a final decision
5. To demand a forfeiture pursuant to Section 2-14(c) which, if not timely paid, shall be prosecuted in the Circuit Court

The final decision of the Town Board to revoke or suspend the nonmetallic mining permit issued pursuant to this ordinance shall be subject to appeal by writ of certiorari to the Circuit Court pursuant to the procedures set forth at Section 2-6(b) (6).

c. Penalty

In addition to the denial, suspension, or revocation of a permit issued under this chapter, any person who shall violate any permit provision or other provision of this ordinance or who shall fail to obtain a permit as required hereunder shall upon conviction of such violation be subject to a penalty of a civil forfeiture of not less than Twenty Dollars (\$20) nor more than Five Hundred Dollars (\$500), together with the costs of prosecution, which include all statutory costs plus actual attorneys fees incurred by the Town in its prosecution of any such violation(s). Any default of such forfeiture determined by a court of competent jurisdiction shall be subject to any penalties as provided by Section 66.115, 66.117, 66.119, and 66.12, Wis. Stats., as may be amended.

Each violation and each day a violation continues or occurs shall constitute a separate offense. Nothing in this chapter shall preclude the Town from maintaining any appropriate action to prevent or remove a violation of any provision of this chapter.

ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH ARE HEREBY REPEALED.

SEPARABILITY OF CHAPTER PROVISIONS. If any section, subsection, sentence, clause, or phrase of the chapter is for any reason held to be invalid or unconstitutional by reason of any decision of any court or competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence, clause, phrase, or portion thereof. The Town Board hereby declares that it would have passed this chapter and each section, subsection, sentence, clause, phrase, or portion thereof irrespective of the fact that any one or more section, subsection, sentence, clause, phrase, or portion may be declared invalid or unconstitutional.

This ordinance shall take effect upon its approval and the day after publication.