

## ORDINANCE NO. 2006-31

### An Ordinance Amending the Regulation of Nonmetallic Mining

The Common Council of the City of Cedarburg, Wisconsin, hereby ordains as follows:

**SECTION 1.** Section 7-10 of the City of Cedarburg Municipal Code is hereby amended to read as follows:

#### “SEC. 7-10-1 STATUTORY PROVISIONS ADOPTED.

This Chapter is adopted pursuant to Section ~~66-038~~ 295, Wis. Stats., which is adopted by reference and made a part of this Chapter as if fully set forth herein.

#### SEC. 7-10-2 DEFINITIONS.

As used in this Chapter:

- (a) **Environmental Pollution** has the meaning specified under Sec. ~~144.01(3)~~ 295.11(2) Wis. Stats.
- (b) **Nonmetallic Mining or Nonmetallic Mining Operation** means operations or activities for the extraction from the earth for sale or use by the operator of mineral aggregates or nonmetallic minerals such as stone, sand, ~~and gravel, fill material and nonmetallic minerals such as~~ asbestos, beryl, clay, feldspar, peat, ~~and talc, and topsoil, including such operations or activities~~ as excavation, grading and dredging. 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.
- (c) **Nonmetallic Mining Refuse** means waste soil, rock, mineral, ~~liquid, vegetation~~ and other ~~waste~~ natural material resulting from a nonmetallic mining operation. This term does not include ~~merchandise~~ marketable by-products resulting directly from or displaced by the nonmetallic mining operation.
- (d) **Nonmetallic Mining Site or Site** means the location where a nonmetallic mining operation is proposed or conducted, including all surface areas from which materials 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 private roads or haulageways for nonmetallic mining.
- (e) **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 this nonmetallic mining reclamation ordinance whether individually, jointly or through subsidiaries, agents, employees, contractors or subcontractors.
- (f) **Reclamation** means the rehabilitation of a nonmetallic mining site including, but 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.
- (g) **Replacement of Topsoil** means the replacement of the topsoil which was removed or disturbed by a nonmetallic mining operation or the provision of soil material to substitute for the topsoil that was removed or disturbed which is at least as adequate as the topsoil which was removed or disturbed for the purposes of providing adequate vegetative cover and stabilization of soil conditions to achieve a land use specified in an approved nonmetallic mining reclamation plan.

**SEC. 7-10-3 EXISTING NONMETALLIC MINING OPERATIONS.**

This nonmetallic mining reclamation Chapter shall apply to any portion of a nonmetallic mining site, including unreclaimed portions of a site which were mined prior to the effective date of this Chapter.

**SEC. 7-10-4 EXEMPT ACTIVITIES.**

This nonmetallic mining reclamation Chapter shall not apply to the following activities per Section 295.16(4), Wis. Stats.:

- (a) Excavations or grading by a person solely for domestic or farm use at his or her residence or farm.
- (b) Excavations or grading conducted for the construction, reconstruction, maintenance or repair of a 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 Sections ~~144.80 to 144.94~~ 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 ~~Sections 144.435 to 144.445 subchs. II to IV of Section 289~~, Wis. Stats., or a hazardous waste disposal facility under ~~Sections 144.60 to 144.74 Section 291~~, Wis. Stats., that are conducted on the property on which the facility is located, but a nonmetallic mining reclamation ordinance and the standards established under Section 295.12(1)(a), Wis. Stats. may apply to activities related to solid or hazardous waste disposal which are conducted at a nonmetallic mining site that is not on the property on which separate from the solid 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.
- (g) Dredging for navigational purposes, to construct or maintain farm drainage ditches and for the remediation of environmental contamination and the disposal of spoils from that dredging.

**SEC. 7-10-5 PERMIT REQUIRED FOR NONMETALLIC MINING.**

- (a) **Permit Required.** No person shall operate any nonmetallic mining site or operation within the City unless he obtains a nonmetallic mining permit from the Common Council. The fee for such permit shall be ~~Seventy-five Dollars (\$75.00)~~ Two Hundred Dollars (\$200.00), plus any actual City administrative expenses, payable by certified check. Operators of existing nonmetallic mining operations shall apply for such permit within thirty (30) days of the effective date of this Chapter.
- (b) **Required Permit Information.** An application for a nonmetallic mining permit shall be submitted by the operator and shall include:
  - (1) An adequate description of the operation, including a legal description of the property;
  - (2) A plan of the site showing the proposed and existing roads and drives, and the sources, quantity and disposition of water to be used, if any;
  - (3) Estimated dates for completion of the extraction and commencement and completion dates for the reclamation;
  - (4) A reclamation plan and such other information as may be necessary to determine the nature of the operation and the effect on the surrounding area;
  - (5) Methods of screening from adjacent properties;

- (6) Hours of operation;
  - (7) Dust and noise control;
  - (8) Maximum depth;
  - (9) Blasting procedures;
  - (10) Location and height of stockpiles; and
  - (11) Such other information the Common Council deems pertinent to the operation.
- (c) **Reclamation Plan.** The reclamation plan shall contain adequate provision that:
- (1) All final slopes around the area be flatter than a three (3) to one (1) horizontal slope in a sand, gravel or borrow pit operation, or in a safe angle or repose in a quarrying operation;
  - (2) Excavations below the grade of the nearest abutting public street or highway shall be set back from the street or highway a distance not less than that required for buildings and structures in the same zoning district;
  - (3) Excavations made to a water-producing depth shall be not less than three (3) feet measured from the low water mark;
  - (4) All final slopes shall be covered with adequate topsoil and seeded to prevent erosion;
  - (5) The plan shall require that, after completion of the anticipated operation, the area shall be cleared of all debris and be left in a workmanlike condition, subject to the approval of the Common Council;
  - (6) There is a timetable for completion of various stages of reclamation of the nonmetallic mining site.
- (d) **Applications.** All applications for a license hereunder shall be made in writing upon the written form provided by the City and distributed by the City Clerk. All applications for permits hereunder shall be signed by the applicant and filed with the City Clerk at least sixty (60) days prior to the licensing period. The Clerk shall immediately refer all applications for a license hereunder to the Common Council for public hearing and approval. The operator shall receive written notice of the public hearing. The license shall be for a period of time as stated in the application or as modified by the Council. Modification of the application or reclamation plan may be permitted or additional conditions may be required upon application. The Council shall consider the effect of the operation and the proposed reclamation upon existing and future conditions, including streets, neighboring land development, land use drainage, water supply, water pollution, air pollution, soil erosion, natural beauty and land value of the locality. The Council may approve, approve conditionally or reject the application and reclamation plan.
- (e) **Financial Assurance.** Before a license and reclamation plan is approved by the Common Council, the operator shall submit an agreement and performance bond or cash escrow agreement to assure the following:
- (1) The operator shall pay for the cost of all improvements required in the reclamation plan by the Common Council.
  - (2) Guaranteed completion of the required reclamation within a period determined by the Council.
  - (3) Payment by the operator for all costs incurred by the City for review and inspection. This would include preparation and review of plans and specifications by the City Engineer and Attorney, as well as other costs of a similar nature.
  - (4) The City may elect to have stages of the reclamation plan performed under the terms of a cash escrow agreement.
  - (5) The required performance bond or cash escrow agreement shall be equal to one and one-quarter (1¼) times the City Engineer's estimated cost of the required improvements.
  - (6) If the required reclamation is not complete within the designated period, all amounts held under the escrow agreement or performance bond shall be turned over and

delivered to the City and applied to the cost of the required reclamation. Any balance remaining after such reclamation has been done shall be returned to the operator. The Common Council, at its option, may extend the bond period for additional periods

- (f) **Fences.** Prior to reclamation, nonmetallic mining sites abutting areas zoned residential shall be enclosed by a security fence of not less than four (4) feet in height. Fence gates shall be locked or secured when the site is unattended so as to prevent uncontrolled access by children to the site.
- (g) **Inspection.** An authorized agent of the City may enter the premises of a nonmetallic mining operation in the performance of his or her official duties by permission of the property owner or operator or pursuant to a special inspection warrant issued under Sec. ~~66.122~~ 66.0119, Wis. Stats., in order to inspect those premises and to ascertain compliance with this nonmetallic mining reclamation Chapter.
- (h) **Prohibitions and Orders.** Nonmetallic mining operations within the City are prohibited if the nonmetallic mining site cannot be reclaimed in compliance with the standards of this Chapter or if other requirements of this Chapter are not met.

#### SEC. 7-10-6 PERMIT REVOCATION.

If any permit is revoked, canceled, rescinded or terminated, the operator shall be given written notice of any charges or violations against him or the reasons proposed for revocation and shall have an opportunity to be heard before the Common Council.

#### SEC. 7-10-7 BLASTING AND/OR ROCK CRUSHING.

- (a) **Definitions.** The following definitions shall apply in the interpretation and enforcement of this Section:
  - (1) **Blasting.** A method of loosening, moving or shattering masses of solid matter by use of explosive compounds to prepare stone for crushing, to prepare stone for building and/or ornamental use, or to prepare property for development.
  - (2) **Person.** Any individual, partner, corporation, company, trustee or association, together with the respective servants, agents and employees thereof.
  - (3) **Rock Crusher.** Any device, machine, apparatus or equipment used either individually or in conjunction with any other device, machine, apparatus or equipment for the purpose of crushing grinding, breaking or pulverizing rock or stone.
- (b) **Operation.** No person within the City shall operate a rock crusher or perform blasting in such a manner so that any dust, dirt or vibration from such operation shall, in any way, damage or injure any person or property within the City. All blasting within the City shall be performed according to the requirements of Chapter 7 of ILHR, Explosive Materials, Wis. Adm. Code, and all subsequent amendments thereto.
- (c) **Permit**
  - (1) **Permit Required.** No person within the City shall operate a rock crusher or perform blasting who does not possess a proper permit ~~therefor~~ from the City.
  - (2) **Applications.** All applications for permits hereunder shall be made in writing upon the written form provided by the City and distributed by the City Clerk. All applications for permits hereunder shall be signed by the applicant and filed with the City Clerk at least ~~sixty (60)~~ thirty (30) days prior to the licensing period. The City Clerk shall immediately refer all applications for permits hereunder to the City Engineer. The City Clerk shall issue a permit hereunder only after first receiving the recommendation of the City Engineer, the duly executed certified check for the permit fee as hereinafter

provided and the submittal of the Plan of Operation, if required, as approved by the City Engineer.

- (3) Certified Check. Each application for a permit hereunder shall be accompanied by a certified check in the sum of the required permit fee as hereinafter provided, or a renewal thereof, the same to be payable to the City.
  - (4) Plan of Operation. Each application to permit a rock crusher hereunder or renewal thereof shall be accompanied by a Plan of Operation which shall include: methods of screening from adjacent properties, hours of operation, hours of blasting and operation of rock crusher, dust and noise control, blasting procedures, location and height of stock piles, whether a rock crusher will be needed and how often, water supply, drainage course, maximum depth, legal description of property in question and other information the City Engineer deems pertinent to the proposed operation. Such Plan of Reorganization shall be approved by the City Engineer.
  - (5) Insurance. Each application for a blasting permit shall be accompanied by a Certificate of Insurance identifying the City of Cedarburg as a party insured in an amount as prescribed in the City's Schedule of Insurance Requirements.
- (d) **Renewals**. All requests for renewals of permits hereunder shall be made at least ~~sixty (60)~~ thirty (30) days prior to the expiration date of the permit and must comply with all requirements of Subsection (c) above.
- (e) **Blasting Procedures and Controls**.
- (1) Energy Ratio. The allowable vibration of any blast at the nearest occupied or used building off the subject premises shall not exceed an energy ratio of 0.5 or resultant particle velocity of 1.35" per second based on the following formula:  
  
Energy ratio = 0.5 = 10.823 f<sup>2</sup>A<sup>2</sup> where: f = frequency in cycles per second, A = amplitude or displacement in inches.  
Energy ratio = .274 V<sup>2</sup> (V = resultant particles velocity expressed in inches per second).
  - (2) Measurement of Blasts. The operator of the quarry operation, when requested to do so by the City Engineer, shall measure and submit data to substantiate compliance with the above formula and the operator of the quarry operation, when requested to do so by the City Engineer, shall measure air blast. This verification shall be performed by a seismological engineering firm acceptable to the City or by the City Engineer. Instrumentation shall be by seismograph similar to VME Seismolog Model "B" and approved seismograph sound measuring equipment or approved equivalents. All expenses for these tests shall be paid by the quarry operator.
  - (3) Blasting Log. A log in duplicate shall be kept of each blast on forms similar to the one on file with the City Clerk. The original copy of this blasting log shall be filed with the Clerk within forty-eight (48) hours after the blast, and a copy shall be kept on file at the quarry office.
  - (4) Cover Material. Operators of quarries for building and/or ornamental stone removal shall cover Primacord, other detonating cord or surface-laid blasting devices with at least one foot (1') of dirt or other suitable cover material.
- (f) **Permit Fee**. The permit fee for any permit issued pursuant to this Section shall be as set forth below. No permit fee shall be prorated. All permits issued hereunder shall expire on December 31 following the date of issue
- (1) Quarries using blasting to supply buildings and/or ornamental stone: ~~Twenty-five Dollars (\$25.00)~~ One Hundred Dollars (\$100.00) per blasting period.
  - (2) Gravel crushing operations using portable or fixed crushing equipment less than thirty (30) days/year: ~~Twenty-five Dollars (\$25.00)~~ One Hundred Dollars (\$100.00) per year.

**Ordinance No. 2006-31**

**Page 6**

- (g) **Penalty.** Any person who shall violate any of the provisions of this Section shall be subject to a penalty as provided in Sec. 1-1-7 of this Code of Ordinances. However, upon conviction for the violation of any of the provisions of this Section by the holder of a permit issued hereunder, and in addition to the forfeiture provided, such permit shall thereupon be canceled, revoked, rescinded and terminated.
- (h) **Enforcement.** Before renewal of any license issued under this Section is refused or any license is revoked, canceled, rescinded or terminated, the licensee shall be given written notice of any charges or violations against him or the reasons proposed for nonrenewal or vocation and shall have an opportunity to be heard before the Common Council.

Passed and adopted this 30<sup>th</sup> day of October 2006.

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Gregory P. Myers, Mayor

Countersigned:

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Sandra M. Ingram, City Clerk

Approved as to form:

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Kaye K. Vance, City Attorney