

**ORDINANCE 3-2013**

**TOWN OF CLIFTON  
PIERCE COUNTY, WISCONSIN**

**NONMETALLIC MINING LICENSING**

**SECTION 1. Title, Findings, Purpose and Authority**

- A. Title. This ordinance shall be known as the “Town of Clifton Nonmetallic Mining Licensing Ordinance” and when referred to herein it is known as “this Ordinance.”
- B. Findings.
1. Nonmetallic mining operations, while a vital component of our state and local economy, can have both direct and indirect adverse impacts.
  2. Studies have documented that nonmetallic mining operations can have adverse impacts on groundwater and surface water, and can generate harmful levels of on-site and off-site dust and noise particularly if blasting and crushing operations are undertaken.
  3. Nonmetallic mining sites can have negative impacts on the landscape and aesthetics if not properly screened, and can present safety concerns to members of the public if not properly secured.
  4. Truck traffic from such operations can also generate on-site and off-site impacts including safety concerns and increased road maintenance.
  5. While certain aspects of mining operations are subject to county, state or federal regulation, there are no comprehensive county, state or federal regulations of nonmetallic mining operations.
  6. Many aspects of nonmetallic mining operations are left unregulated with potential adverse impacts to the public health, safety and welfare of the residents of the Town.
- C. Purpose. The purpose of this Ordinance is to require licenses for nonmetallic mining operations in order to:
1. Supplement federal, state, and county regulations.
  2. Provide minimum standards to protect the health, safety and welfare of the public.
  3. Conserve the Town’s scenic beauty and natural resources.
  4. Minimize the potential negative impacts to surrounding landowners and Town residents.
  5. Provide assurances that mitigation of impacts is considered.
  6. Provide for administration and enforcement of this Ordinance.
- D. Authority.
1. This Ordinance is adopted by the powers granted to the Town of Clifton by the Town’s adoption of Village powers on April 6, 1965 under § 60.10 and § 61.34, its authority under § 66.0415, Wis. Stats., and other authority under the statutes.
  2. Any amendment, repeal or recreation of the statutes relating to this Ordinance made after the effective date of this Ordinance is incorporated into the Ordinance by reference on the effective date of the amendment, repeal or recreation.

**SECTION 2. Applicability**

- A. This Ordinance shall apply to all nonmetallic mining operations and mine sites with the Town of Clifton, except as included in Section 2(B).
- B. This Ordinance shall not apply to the following nonmetallic mining operations:
1. Nonmetallic mining operations in operation prior to June 4, 2013, under the following conditions:

- i. The operation operates under the original reclamation plan and conditional use permit approved by Pierce County and the reclamation plan or conditional use permit is not modified in any way.
  - ii. If the reclamation plan is modified, the mine is considered a new operation and is subject to this Ordinance.
- 2. Nonmetallic mining sites or portions of a site that are subject to permit and reclamation requirements of the Wisconsin Department of Natural Resources under § 30.19, § 30.195, or § 30.20, Wis. Stats., and complies with Ch. NR 340, Wisconsin Administrative Code.
- 3. Excavations subject to the permit and reclamation requirements of § 30.30 or § 30.31, Wis. Stats.
- 4. Excavations or grading by a person solely for domestic or farm use at that person's residence or farm.
- 5. Excavations or grading conducted for the construction, reconstruction, maintenance or repair of a highway, railroad, airport facility, or any other transportation facility where the excavation or grading is entirely within the property boundaries of the transportation facility.
- 6. Grading conducted for preparing a construction site or restoring land following a flood or natural disaster.
- 7. Excavations for building construction purposes conducted on the building site.
- 8. Nonmetallic mining, above or below ground, which affect less than one (1) acre of total area over the lifetime of the mine.
- 9. Removal from 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.
- 10. Any mining operation, the reclamation of which is required in a permit obtained under § 293, Wis. Stats.
- 11. Any activities required to prepare, operate or close a solid waste facility under § 289, Wis. Stats., or a hazardous waste facility under § 291, Wis. Stats., that are conducted on the property where the facility is located, but an applicable nonmetallic mining reclamation ordinance and the standards established in this Ordinance 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 where 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 construction berms, dikes or roads.
- 12. Wisconsin Department of Transportation
  - i. Nonmetallic mining conducted to obtain stone, soil, sand or gravel for construction, reconstruction, maintenance or repair of a highway, railroad, airport, or any other transportation facility or part thereof, if the nonmetallic mining is subject to the requirements of the Wisconsin Department of Transportation concerning the restoration of the nonmetallic mining site.
  - ii. This exemption only applies to a nonmetallic mining operation with limited purpose and duration where the Wisconsin Department of Transportation actively imposes reclamation requirements and the operator reclaims the nonmetallic mining site in accordance with Ch. 241 of the Pierce County Code. The duration of the exemption shall be specific to the length of the Wisconsin Department of Transportation contract for construction of a specific transportation project.
  - iii. If a nonmetallic mining site covered under Section 2(B)(12)(i) and (ii) is used to concurrently supply materials for projects unrelated to Wisconsin Department of Transportation project, the exemption in this subsection still applies, provided

that the site is fully reclaimed under Wisconsin Department of Transportation contract and supervision.

13. Dredging for navigational purposes, to construct or maintain farm drainage ditches and for the reclamation of environmental contamination and the disposal of spoils from these activities.

### SECTION 3. Definitions

- A. Adjoining Landowner. Any property within one-half (.5) mile of the proposed mine site, regardless of whether there is a residence or structure on the property.
- B. Berm. An earthen wall used to control surface runoff, conceal the mining operation from view, or act an effective obstacle to entry.
- C. County. Pierce County.
- D. Landowner. The person or entity who has title to land in fee simple or who holds a land contract for the land.
- E. Mine Site or Site. Land, above or below ground, from which mineral aggregates or nonmetallic minerals will be extracted for sale or use by the operator, including all land on which is or will be located any structures, equipment, storage facilities, stockpiles, washing or screening facilities, private roads or haulage ways associated with nonmetallic mining operation; and all contiguous lands to the nonmetallic mining operation under common ownership or control of the owner or operator.
- F. Nonmetallic Minerals. A product, commodity or material consisting principally of naturally occurring, organic, inorganic, nonmetallic, non-renewable material. Nonmetallic minerals include but are not limited to stone, rock, sand, gravel, asbestos, beryl, diamond, clay, coal, feldspar, peat and talc.
- G. Nonmetallic Mining. Any or all of the following:
  1. Extraction from the earth of mineral aggregates or nonmetallic minerals for off-site use or sale, including drilling and blasting as well as associated activities such as excavation, grading and dredging of such materials.
  2. Manufacturing or processing operations that may involve the use of equipment for the crushing, screening, separation, or blending of the mineral aggregates or nonmetallic minerals obtained by extraction from the mining site or with materials transferred from off-site.
  3. Manufacturing process aimed at producing nonmetallic products for sale or use by the operator.
  4. Stockpiling of nonmetallic products for sale or use off-site and stockpiling of waste materials.
  5. Transport of the extracted nonmetallic materials, finished products or waste materials to or from the extraction site.
  6. Disposal of waste materials.
  7. Reclamation of the extractions site.
- H. Operator. Any person who is engaged in, or who has applied for a license to engage in nonmetallic mining, whether individually, jointly or through subsidiaries, agents, employees, contractors, or subcontractors.
- I. Operator's License or License. The license required of mining operators in this Ordinance to undertake nonmetallic mining in the Town of Clifton.
- J. Town. The Town of Clifton.
- K. Town Board. The Town Board of the Town of Clifton.
- L. Waste Material. The non-marketable by-product (overburden or interburden) that results directly from or is displaced by extraction or that is a by-product (tailings) of a manufacturing process that is scheduled for disposal at the extraction site or some other site as part of a reclamation plan.

#### SECTION 4. Operator's License

- A. License Requirement. No person shall operate a nonmetallic mine within the scope of this Ordinance in the Town of Clifton without first obtaining an operator's license from the Town of Clifton.
- B. License Term.
  - 1. An operator's license shall be granted for a period not to exceed two (2) years and may be renewed upon application for a period not to exceed two (2) years.
  - 2. The application deadline and review timeline will coincide with the review of the conditional use permit application by Pierce County.
- C. License Amendment. If the Town has issued an operator's license, the operator may request an amendment to that license during the license term, using the same process as the original license application.
- D. License Transfer. An operator's license may be transferred to a new operator, after a public hearing and notice to surrounding landowners, under the following conditions:
  - 1. The new operator assumes full financial assurances, as in Section 10 of this Ordinance, and any assurances required by Pierce County.
  - 2. The new operator is an individual authorized to do business in Wisconsin.
  - 3. A written statement is presented that acknowledges any existing obligations of the licensed operator and requires the new operator to assume all obligations of the licensed operator.
  - 4. The new operator is of comparable credit worthiness as the licensed operator.
  - 5. The new operator has obtained the transfer of any reclamation permit from Pierce County required to assume the operation.
  - 6. The new operator assumes every responsibility under Town or County agreements related to nonmetallic mining operation.
- E. License Revocation. An operator's license may be revoked, as in Section 9.

#### SECTION 5. Application Procedure

- A. Application Form. The application form for a license to mine in the Town of Clifton shall be available from the Town Clerk.
- B. Application Submittal.
  - 1. The applicant shall submit ten (10) copies of the application and all required documentation required in Section 6 of this Ordinance to the Town Clerk.
  - 2. The application shall include all required fees, as included in the current Town Fee Schedule.
  - 3. The application shall be signed by the operator and the landowner, provided the landowner is a person other than the operator.
- C. Application Review.
  - 1. The Town Clerk shall forward the application to the Town Board for initial review to determine if additional information or expertise is necessary to properly evaluate the application.
    - i. The Town Board may request the applicant to submit additional information if the Town Board determines the application to be incomplete.
    - ii. The Town Board may also retain the services of a qualified firm(s) or person(s) with appropriate expertise to review the application and report to the Town whether additional information is required for review of the application and to determine whether the application meets the standards of this Ordinance.
    - iii. If the Town Board determines that additional expertise is required, the Town Board shall authorize retaining the services of a qualified firm(s) or person(s)

with appropriate expertise to advise the Town and shall provide written notice to the applicant of the additional administrative fee to be charged to cover the cost of the services of any such retained expert.

- iv. The additional fee(s) shall be paid before the additional review is undertaken.
- v. Once the applicant has submitted any additional information and has paid the additional fee(s), the retained expert(s) shall report to the Town on whether the application meets the standards of this Ordinance.

2. If no additional information or expertise is deemed necessary the Town Board shall refer the application to the Town Plan Commission.

D. Notice and Hearing.

1. Once the application is considered complete and any report by a retained expert(s) has been completed, the Town Clerk shall place the application on the agenda for the next regular meeting of the Town Plan Commission.
2. If a special meeting is warranted, the applicant shall pay the additional fees incurred for the special meeting.
3. The Plan Commission shall set a date for a public hearing with Class 2 notice and provide written notice, to be paid for by the applicant, to all adjoining landowners at least fifteen (15) days prior to the hearing date.
4. The Plan Commission shall take all public comments on the proposed license at the public hearing.
5. The Plan Commission shall review the expert's report(s), consider public comments and make recommendation to the Town Board within ninety (90) days from the date a complete application was received regarding the license.
6. The Plan Commission review timeline can be extended upon written notice to the applicant.

E. Town Board Decision.

1. The Town Board may grant the license if it determines that the operation will be consistent with the minimum standards and purposes of this Ordinance.
2. The Town Board may grant the license subject to reasonable restrictions and conditions.
3. If the Town Board denies the license, the applicant will be notified in writing and may request a hearing under the provisions in Section 9(C) of this Ordinance.

SECTION 6. License Application. All applicants for a mining license shall submit the following information:

A. Ownership Information.

1. The names, addresses, phone numbers, and e-mail addresses of the operator of the nonmetallic mining operation.
2. The names, addresses, phone numbers, and e-mail addresses of all owners or lessors of the land on which the nonmetallic mining operation will occur.
3. If the operation is subject to a lease, a copy of a fully executed lease and/or agreement between the landowner and the operator who will engage in mining operations on the proposed site.
4. Any other information deemed necessary by the Town Board.

B. Site Information and Maps.

1. Certified Survey Map (CSM) and parcel identification number of the property(s) on which the above or below ground nonmetallic mining operation will be located.
2. Aerial photo of the proposed site at a scale of one (1) inch equals six hundred and sixty (660) feet signed by both the operator and the landowner.
3. A topographic map of the mine site extending one-half (.5) mile beyond the site boundaries at contour intervals no wider than ten (10) feet showing the boundaries of the

site, the locations and total acreage of the site, and the name of all roads within one mile of the site.

4. The location within the site of all existing buildings and other structures, erosion control measures, monitoring wells, settling ponds, wash areas, equipment, stockpiles, storage areas, and parking areas.
5. A map on which the all residential, agricultural and municipal wells within one-half (.5) mile of the boundaries of the site in all directions are marked and given a numerical identification of the location.
6. The location and name of all surface waters, including lakes, private or public ponds, streams (including intermittent streams and headwaters), drainage ditches, wetlands, drainage patterns and other water features on that site and within one-half (.5) mile of the site.
7. A copy of the soil borings report or other documentation and analysis containing a description of the distribution, depth and type of topsoil on the site as well as the geological composition and depth and width of the nonmetallic deposit.
8. A map indentifying the location of all other non-contiguous sites within the Town of Clifton and adjacent towns, if any, that will contribute extracted material to the same manufacturing facility to which the site for which the applicant seeks a license will also contribute.
9. An outdoor lighting plan shall be submitted that shows the location, mounting height, types of luminaries, accessory equipment such as shades and deflectors, beam direction, and manufacturer's photometric data.

C. Existing Well Water Conditions.

1. All wells within one-half (.5) mile of the proposed nonmetallic mining operation shall be tested for water quality and condition and shall be included in the license application.
2. The cost of such testing shall be paid for by the applicant.

D. Operation Plan.

1. Dates of the planned commencement and cessation of the operation.
2. Description of mining methods, machinery and equipment to be used for extraction and processing of the extracted material, and the sequence of operations.
3. Estimated volume of material to be extracted over the life of the mine and for the next calendar year.
4. Location of road access points.
5. The proposed location within the site of all buildings and other structures, equipment, stockpiles, storage and parking areas.
6. A map identification all proposed on-site and off-site trucking routes, together with the frequency of traffic and the common schedule of travel to be used for transporting extracted materials or products to or from the site to processing facilities.
7. A water budget, including an estimate of the amount of daily water use, water sources, and methods for disposing of water including methods used for infiltration and control of run-off.
8. A listing of any hazardous materials, including fuel supplies that will be stored on site and a description of measures to be used for securing and storing these materials.
9. A listing of all chemicals used in the manufacturing or processing operations or in controlling dust.
10. Measures to be taken to screen the mining site from public view.
11. Measures to be taken to minimize noise, fugitive dust, vibrations, and light pollution.
12. Security measures to employed on the mining site.
13. A plan controlling any flooding at the mining site.

E. Compliance with Minimum Standards.

1. The operator shall provide the information necessary to demonstrate that mining operation will comply with the minimum standards in Section 7 of this Ordinance.
2. For mining operations commencing after the effective date of this Ordinance, the operator shall also provide information establishing baseline conditions at the site before mining operations commence, including the following:
  - i. Groundwater elevation across the site.
  - ii. Groundwater quality at the site showing levels of lead, arsenic and any other toxic metal that may reasonably be believed to be present in the area or in the type of deposit from which the extraction will be made.
  - iii. Base flow of perennial and intermittent surface waters with one-half (.5) mile of the site.

F. Special Exceptions.

1. The applicant may request a special exception from the application requirements of this Section if it can be demonstrated that the information required can be provided by alternative means or is not necessary for an evaluation of the particular mining operation, and that the public health, safety and welfare will not adversely affected thereby.
2. All expenses incurred in connection with the consideration of a special exception request shall be at the applicant's expense.

G. Additional Requirements. The Town Board may impose requirements in addition to or exceeding the minimum standards of this Section when determined that public health, safety and welfare will not be adequately protected with the imposition of additional measures.

SECTION 7. Standards of Operation. The Town Board may grant a license to mine if the application is complete and the applicant can demonstrate that the following minimum standards operation will be met:

A. General Standards.

1. The operator and landowner shall allow any member of the Town Board, or any agent or employee of the Town, to access and inspect the mine site and operational records upon reasonable notice.
2. The operator shall demonstrate compliance with all of the other provisions of this Ordinance.
3. The operator shall demonstrate that all other applicable federal, state, county and town permits and approvals required for the nonmetallic mining operation have been or will be obtained prior to commencement of operation.
4. The operator shall stake or otherwise mark the borders of the entire site and shall secure the site by fencing or other appropriate means.
5. The operator shall have obtained a blasting permit from the Town for any blasting operations.
6. The operator shall provide notices of any violation, citations, or other enforcement actions taken by any governmental body against the mining operation within the Town or Pierce County.
7. The operator shall keep the mine site in a neat and orderly condition. Equipment and buildings at the site shall be maintained in good appearance and working order.

B. Off-Site Impacts.

1. The operator shall undertake all measures necessary for the control of surface water runoff from nonmetallic mining operations in order to prevent pollution and erosion of sediment onto neighboring properties, surface water and groundwater, and shall also comply with the standards for erosion control under Ch. NR 216 and NR 151, Wisconsin Administrative Code, as applicable.
2. In the event that the mine site contains areas adjacent to nonmetallic mining operations that are being used for agricultural, commercial or residential purposes, the operator shall

undertake all measures necessary to control surface water runoff from those areas entering mining operations or otherwise causing contamination of surface water and groundwater.

3. The nonmetallic mining operation, including accessory buildings and uses, shall have the following minimum setbacks:

	<b>Blasting Operations</b>	<b>No Blasting Operations</b>
<b>Public Roadways</b>	100 feet	100 feet
<b>Property Boundaries</b>	100 feet	100 feet
<b>Existing Residences</b>	1,000 feet	500 feet

4. The operator shall screen the mining operations from public view to the maximum extent practical through the use of berms, additional setbacks or other measures.
5. The operator shall limit the hours of operation to the following:
  - i. Monday through Friday: 6:00 a.m. to 6:00 p.m.
  - ii. Saturday: 6:00 a.m. to 12:00 p.m.
  - iii. Office work and equipment maintenance can be conducted after operating hours, provided it takes place within a structure and does not negatively impact neighboring properties.
  - iv. The operator may submit a plan for extended hours of operation for any activities being conducted over more than a two-day period as a special exception, if it can demonstrate that additional hours are necessary for the mining operation and it would be consistent with public health, safety and welfare.
  - v. Any request for additional operating hours or days will require a public hearing by the Town Board and will be at the operator's expense.
6. The operator shall limit night lighting on site to that which is minimally necessary for security. Every effort consistent with the legal requirements for safety shall be made to minimize illumination of the night sky and neighboring properties. At a minimum, such measures should include the following:
  - i. Non-transparent shields which directs lighting earthward.
  - ii. Portable lighting shall be used only as necessary to illuminate temporary work areas.
  - iii. The use of berms of sufficient height coupled with other methods of visual screening to block light from neighboring properties.
  - iv. The design and location of access roads to minimize lights from traffic and operations to neighboring properties.
7. The operator shall control off-site noise levels to the maximum extent practicable.
  - i. The noise levels at the boundaries of the mining or processing site shall not exceed sixty (60) decibels, except operations with approved blasting permits.
  - ii. The operator shall use back-up signals creating the least offensive noise audible to persons residing near the property consistent with legal requirements.
  - iii. The use and regulation of compression release engine brakes, commonly known as jake-brakes, is at the discretion of the Town Board, where posted.
8. The operator shall utilize all relevant dust control measures specified in Ch. NR 415.075, Wisconsin Administrative Code, including ambient air monitoring, the preparation of a fugitive dust control plan, and required record keeping, all of which shall be made available to the Town. The operator shall notify the Town and provide it with a copy of any application for an exemption or a variance from the air monitoring requirements of NR 415.075(4) and facilitate the Town's participation in the exemption or variance application and review procedure.



C. Groundwater and Surface Water Standards.

1. Impacts to Groundwater Quality.

- i. Mining operations shall have at least one (1) monitoring well for every five-acre (5) sector of the mine site.
- ii. The operator shall supply quarterly samples taken and analyzed by an independent contractor for lead, arsenic and any other toxic metal that may reasonably be believed to be present in the area or in the type of deposit from which the extraction will be made and provide the results to the Town Board for review as part of the required annual report in Section 8(A).
- iii. Mining operations shall not cause an exceedance of groundwater quality standards in Ch. NR 140, Wisconsin Administrative Code, on the mine site or within one-half (.5) mile of the mine site.

2. Impacts to Groundwater Quantity.

- i. Mining operations shall not extract minerals at a depth below the point that is twenty (20) feet above the groundwater table.
- ii. Mining operations shall not cause a significant reduction in the quantity of groundwater available for reasonable use by current users within one-half (.5) mile of the site.
- iii. A "significant reduction" is a drop in the water table that results in a substantial adverse impact on a private well within one-half (.5) mile of the mine site, including but not limited to, the inability of a well to provide water on a continuous basis.

3. Impacts to Surface Water Base Flow.

- i. Mining operations shall not cause a lowering of the groundwater table that results in adverse effects on perennial and intermittent surface waters with one-half (.5) mile of the mining site.
- ii. Adverse effects include, but are not limited to, a reduction of water in streams and tributaries to or below base flows established prior to the beginning of the mining operation.

4. Impacts to Surface Water Use.

- i. Mining operations shall not cause a lowering of the groundwater table that results in adverse effects on surface waters which serve as a critical source of water for agricultural or municipal functions, such as fire protection within one-half (.5) mile of the mine site.
- ii. Adverse effects include, but are not limited to, a reduction of water in the streams and tributaries to or below base flows established prior to the beginning of the mining operation.

D. Hazardous Materials.

1. All hazardous chemicals shall be stored, used and disposed of in accordance with applicable state and federal law(s).
2. The operator shall not dispose of waste materials at the mining site containing any hazardous chemicals in toxic amounts, or residuals declared to be hazardous by a government agency in toxic amounts.
3. The operator shall have an approved plan on file with the Town for responding to spills of any hazardous materials on the site prior to commencing operations and must also be provided to the following agencies:
  - i. Pierce County Emergency Management Department.
  - ii. Pierce County Sheriff's Department.
  - iii. River Falls Rural Fire Group.
  - iv. Prescott Area Fire and Emergency Medical Service.
  - v. River Falls Area Ambulance Service.

- vi. Ellsworth Area Ambulance Service.
- E. Special Exceptions.
  - 1. The applicant may request a special exception from the minimum standards of this Section if it can demonstrate that the intent of this Ordinance can be achieved by the use of alternative measures and that the public health, safety and welfare will not be adversely affected thereby.
  - 2. All expenses incurred in connection with the consideration of a special exception request shall be at the applicant's expense.
- F. Additional Requirements. The Town Board may impose requirements in addition to or exceeding the minimum standards of this Section when determined that public health, safety and welfare will not be adequately protected with the imposition of additional measures.

**SECTION 8. Annual Report and License Renewal**

**A. Annual Report.**

- 1. The operator is required to submit a copy of the annual report submitted to Pierce County, as required in § 241-25 of the Pierce County Code, and the following additional information to the Town:
  - i. A written report demonstrating how the operator has been in compliance with all terms and conditions of its license and this Ordinance, including any groundwater, surface water and other monitoring results.
  - ii. The estimated volume of material to be extracted in the ensuing year.
  - iii. Any modifications to the ownership or operations plan.
  - iv. A summary of all areas of non-compliance, and a plan for bringing non-compliant areas into compliance.
  - v. A copy of all blasting records.
  - vi. Results of the required quarterly monitoring well samples.
- 2. If, as part of the reclamation permit administered by Pierce County, an inspection is completed in lieu of a report being submitted or a report is not required for any other reason, the operator is required to submit an annual report to the Town by January 31 for the previous year, including the following information:
  - i. The name, mailing address, and email address of the operator.
  - ii. The location of the nonmetallic mining site, including legal description, tax key number or parcel identification number, if available.
  - iii. The identification number of the applicable nonmetallic mining permit, if assigned by Pierce County.
  - iv. The acreage currently affected by nonmetallic mining extraction and not yet reclaimed.
  - v. The amount of acreage that has been reclaimed to date, on a permanent basis, and the amount reclaimed on an interim basis.
  - vi. A plan, map or diagram accurately showing the acreage described in Section 8(A)(2)(iv) and (v).
  - vii. The information required in Section 8(A)(1)(i)(ii)(iii)(iv) and (v).

**B. License Renewal.**

- 1. Upon renewal of the Conditional Use Permit required by Pierce County, the operator shall apply for a renewal of the operator's license to the Town Board.
- 2. The application shall be accompanied by the payment of both the renewal application fee and the base administration fee established for the administration of this Ordinance, and as included in the current Town Fee Schedule.
- 3. The application shall include the annual report from the previous calendar year in accordance with the provisions of Section 8(A).

4. The Town Clerk shall review the application within thirty (30) days of receipt in order to determine whether the application is complete and upon determination that it is complete shall forward it to the Town Board.
5. The Town Board shall review the application to determine if additional expertise is necessary to properly evaluate the application.
  - i. The Town Board may retain an engineer or other qualified person with appropriate expertise to inspect the mine site, unless the site is reported as being inactive during the past year, in which case a member of the Town Board may be assigned to inspect the site.
  - ii. If it is determined that additional expertise is required, the Town Board shall authorize hiring an engineer or other qualified person with appropriate expertise to advise the Town and shall give written notice to the applicant of the additional administrative fee to be charged beyond the base administrative fee to cover the cost of additional review by the retained expert.
  - iii. The additional fee shall be paid before the additional review is undertaken.
  - iv. Once the applicant has submitted any additional information and has paid the additional administrative fee in the amount charged, the retained expert shall report to the Town Board on whether the renewal application meets the requirements of this Ordinance.
  - v. The Town Clerk shall place the request on the agenda of the next regular or special Town Board meeting prior to the expiration of the license.
6. If no additional information or expertise is required, the Town Board shall schedule the application for a decision, as in Section 8(B)(7).
7. The Town Board may grant the request for renewal if it finds:
  - i. There have been no material violations of the Ordinance or the license which have not been appropriately remedied; and
  - ii. the operator has not received multiple or recurring citations or orders for violations of the operator's license or this Ordinance; and
  - iii. all applicable fees have been paid and financial responsibility requirements have been met; and
  - iv. all ownership changes or modifications to the operation plan have been approved by the Town Board; and
  - v. the Conditional Use Permit has been granted by Pierce County; and
  - vi. any reclamation activities are complete in accordance with the approved reclamation plan.
8. If the Town Board denies the request for renewal, the Town Board shall notify the operator in writing and provide the operator with an opportunity for a hearing.

**SECTION 9. Inspection, Enforcement, Procedures and Penalties**

- A. **Inspection.** In addition to an annual inspection pursuant to Section 8 of this Ordinance, the Town Board or other authorized representative of the Town, may make inspections to determine the condition of nonmetallic mining sites in the Town of Clifton in order to safeguard the health and safety of the public and determine compliance with the minimum standards under this Ordinance upon showing proper identification, and upon reasonable notice.
- B. **Violations.** The following are violations under this Ordinance:
  1. Engaging in nonmetallic mining without an operator's license granted by the Town Board.
  2. Noncompliance with the minimum standards and other terms of this Ordinance.

3. Providing incorrect or false statement in the information and documentation submitted during the licensing process or during inspection of the operation by the Town or its duly appointed representative.
4. Failure to timely file the annual operational report under Section 8 of this Ordinance.
5. Failure to take appropriate action in response to a notice of violation, citation, request for additional financial assurance under Section 10 of this Ordinance, or other order issued by the Town.
6. Failure to comply with all state and county regulations that govern or affect the operator's nonmetallic mining operation.

C. Hearings.

1. Any person affected by a notice and order issued in connection with the enforcement of this Ordinance under Section 9(D), or upon denial of an application for a license or license renewal, may request and shall be granted a hearing on the matter before the Town Board, provided such person shall file with the Town Clerk, a written petition requesting the hearing and setting forth his name, address, telephone number and a brief statement of the grounds for the hearing or for the mitigation of the order.
2. Such petition shall be filed within thirty (30) days of the date the notice and order are served or upon thirty (30) days upon denial of an application for a renewal.
3. Upon receipt of the petition, the Town Clerk shall set a time and place for a hearing before the Town Board and shall give the petitioner written notice thereof.
4. After the hearing, the Town Board by a majority vote, shall sustain, modify or withdraw the notice under Section 9(D), or grant or deny the license or license renewal, depending on its findings as to whether the provisions of this Ordinance have been complied with, and the petitioner shall be notified within ten (10) days in writing of such findings.
5. The proceedings of the hearing, including the findings and decision of the Town Board and the reasons therefore, shall be summarized in writing and entered as a matter of public record in the office of the Town Clerk.
6. Such record shall also include a copy of every notice and order issued in connection with the case.
7. All expenses incurred by the Town for the hearing and evaluation, including retained experts, shall be at the petitioner's expense.
8. Prior to the hearing, the petitioner shall submit to the Town Clerk such amount as the Town Board reasonably deems necessary to pay for the cost of such experts to evaluate the petition.

D. Remedies. The Town Board may take any appropriate action or proceeding against any person in violation of this Ordinance, including the following:

1. Issue a stop work order.
2. Issue a notice of violation and order that specifies the action to be taken to remedy a situation.
3. Issue a citation in accordance with the Town of Clifton Citation Ordinance.
4. Refer the matter to legal counsel for consideration and commencement of legal action including the assessment of penalties under Section 9(F) to obtain injunctive relief.
5. Suspend or revoke the operator's license under Section 9(E).

E. License Suspension or Revocation. After giving notice and providing the licensee the opportunity for a hearing, the Town Board may suspend or revoke an operator's license for a violation under Section 9(B) or any conditions or requirements imposed as a license condition.

F. Penalties.

1. Any person or entity who is adjudicated for a violation of this Ordinance shall pay the forfeiture included in the Town Citation Ordinance's Schedule of Deposits per violation and/or be subject to injunctive relief.
2. Each day a violation exists is a separate violation.

3. Any person or entity adjudicated for violation of this Ordinance shall pay court costs, reasonable attorney's fees, and any other associated fees or costs incurred by the Town.
4. The remedies provided herein shall not be exclusive of other remedies.
5. A failure by the Town to take action on any past violation(s) shall not constitute a waiver of the Town's right to take action on any present violation(s).

SECTION 10. Financial Assurance.

- A. Financial assurance shall be provided to the Town as a condition of license approval or renewal in the amount determined by the Town's retained consultants to be one hundred and fifty percent (150%) of all amounts necessary for the following:
  1. Road Repair and Improvements. Amounts necessary for the repair and maintenance of Town roads used for vehicular traffic transporting materials to or from the mining site at which the operator's license is in effect throughout the license term.
  2. Water Supply. An amount deemed necessary by the Town Board to provide an alternative water supply to potentially affected residents or agricultural operations within one-half (.5) mile of the mining site, or such other area shown to be impacted by the mining operation, where the quantity or quality of groundwater to such residents or agricultural operations has been adversely affected by the mining operation.
- B. The form of financial assurance made to the Town shall be that form agreed to by the Town Board and may include, but is not limited to, performance bonds, irrevocable letters of credit or other measures or assurances as determined by the Town Board, and shall remain in effect until the reclamation is completed in accordance with the approved plan.
- C. In the event Town Board determines that the amount of financial assurance must be increased to meet specific road repair or water supply needs, or the amount available has been utilized, the Town shall notify the operator of the additional amount needed and the basis for the request and the operator shall have thirty (30) days to provide the increased amount.
- D. The operator shall also provide to the Town proof that it has provided the financial assurance for reclamation required under Pierce County Code § 241-14 and Wisconsin statutes.

SECTION 11. Damages to Private Water Supply

- A. A property owner within one-half (.5) mile of the mine site may seek remedies from the licensee under Section 11(B)(C)(D) or (E) for any of the following damages to private water supply caused by the mining operation:
  1. A preventative action limit or enforcement standard is exceeded in a private water supply well on the owner's property.
  2. A substantial adverse impact on the quantity of water from a private well on the owner's property occurs, including but not limited to the inability of any such well to provide water on a continuous basis.
  3. A lowering of surface waters which serve as a source of water for personal, residential, agricultural or municipal functions on the owner's property to levels below base flow levels for more than five (5) days.
- B. Any property owner under Section 11(A) seeking a remedy under this Section shall simultaneously file a notice with the Town and the mine operator of the occurrence of the event under Section 11(A) explaining the nature and extent of the problem.
- C. Within twenty four (24) hours of receipt of such notice under Section 11(B), the Town may use funds provided under Section 10 to provide an adequate interim water supply.
  1. The Town shall also use funds under Section 10 to indemnify the Town for any claims filed under § 281.77(4), Wis. Stats.

2. Any interim water supply shall continue until the Town has approved the report or plan under Section 11(D).
- D. Within twenty (20) days of receipt of notice under Section 11(B), the mine operator shall provide to the property owner and to the Town a report which demonstrates that the impact to the property owner was not attributable to the mining operation or shall present a plan for permanent alternative water supply to be paid by the operator.
  1. In consultation with the property owner, the Town shall review the report or plan and approve or deny such plan.
  2. If the Town determines that the mine operator was not the cause of damage to the private water supply, the operator may elect to be reimbursed by the property owner for the costs of supplying water during a period not exceeding one (1) year.
- E. A property owner beyond one-half (.5) mile of the mine site may apply to the Town for use of funds under Section 10 to remedy damages to a private water supply identified in Section 11(A), provided that the property owner can demonstrate to the Town that the damage to the private water supply was caused by the mining operation. If the Town determines that the damage was caused by the mining operation, the property owner can utilize the remedies in Section 11(B)(C) or (D) and receive reimbursement from the mining operation for all expenses related to incurring the well assessment.

#### SECTION 12. Mining Agreement.

- A. Any of the provisions of this Ordinance, including the license term, may be modified by agreement between the Town and the Operator if the Town Board determines that the agreement provides protections for the public at least equal to those of this Ordinance.
- B. Any proposed modifications shall require the Town Board to conduct a public hearing, with written notice to all adjoining landowners at least fifteen (15) days prior to the hearing date, to be paid for by the operator.

#### SECTION 13. Interpretation, Abrogation and Severability

- A. Interpretation. In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements, liberally construed in favor of the Town Clifton and shall not be deemed a limitation or repeal of any other powers granted by the Town of Clifton or Wisconsin Statutes.
- B. Abrogation.
  1. It is not intended by this Ordinance to repeal, abrogate, annul, impair or interfere with any existing agreements, easements, covenants, deed restrictions, or permits created or already issued prior to the effective date of this Ordinance.
  2. However, where this Ordinance imposes greater restrictions, the provisions of this Ordinance shall govern.
- C. Severability.
  1. Should any section, clause, or provision or portion of this Ordinance be adjudged unconstitutional or invalid, unlawful, or unenforceable by a final order of a court of competent jurisdiction including all applicable appeals, the remainder of this Ordinance shall remain in full force and effect.
  2. If any application of this Ordinance to a particular parcel of land is adjudged unconstitutional or invalid by a final order or a court of competent jurisdiction including all applicable appeals, such judgment shall not be applicable to any other parcel of land not specifically included in said judgment.

SECTION 14. Effective Date. Following passage by the Town Board, this ordinance shall take effect the day after the date of publication or posting, as provided in § 60.80, Wis. Stats.

Adopted this 4<sup>th</sup> day of June, 2013

By: LeRoy Peterson  
LeRoy Peterson  
Town Chairman

Attest: Judy Clement-Lee  
Judy Clement-Lee  
Town Clerk/Treasurer

Published:

Effective: