

Nonmetallic Mine Operator's License Ordinance

Town of El Paso
Pierce County, Wisconsin

Ordinance No. 2013-01

Section 1.01. Finding, Purpose and Authority

- (1) Findings. Nonmetallic mining operations, while a vital component of our state and local economy, can have both direct and indirect adverse impacts. Studies have documented that nonmetallic mining operations can have adverse impacts on groundwater and surface water, and can generate harmful levels of dust and noise particularly if blasting and crushing operations are undertaken. 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. Truck traffic from such operations can also generate off-site impacts including safety concerns to children and other residents. While certain aspects of mining operations are subject to state or federal regulation, there is no comprehensive state or federal regulation of nonmetallic mining operations. 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.
- (2) Purpose. The purpose of this Ordinance is to provide minimum standards for all nonmetallic mining operations in the Town, and to require licenses for nonmetallic mining operators in order to protect public health and safety, to preserve the scenic beauty of the Town's landscapes and environment, to protect the public from damage to both the quantity and quality of ground and surface waters, to minimize or prevent adverse impacts from on-site and off-site operations, and to promote the general welfare of the people and communities within the Town of El Paso.
- (3) Authority. This Ordinance is adopted by the powers granted to the Town of El Paso by the Town's adoption of Village powers under Wis. Stat. §§ 60.10 and 61.34, its authority under § 66.0415, and other authority under the statutes. Any amendment, repeal or recreation of the statutes relating to this Ordinance made after the effective date of this Ordinance is incorporated into this Ordinance by reference on the effective date of the amendment, repeal or recreation.

Section 1.02. Applicability and Scope

- (1) This Ordinance shall apply to all nonmetallic mining operations and mine sites within the Town of El Paso except as set forth in sub. (2).
- (2) This Ordinance shall not apply to the following nonmetallic mining operations:
 - (a) Excavations or grading by a person solely for domestic or farm use at that person's residence or farm.
 - (b) Excavations or grading conducted for the construction, reconstruction, maintenance or repair of a highway, railroad, or any other transportation facility where the excavation or grading is entirely within the property boundaries of the highway, railroad or other transportation facility.

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- (c) Grading conducted for preparing a construction site or restoring land following a flood or natural disaster.
 - (d) Excavations for building construction purposes conducted on the building site.
 - (e) Nonmetallic mining at nonmetallic mining sites where less than one acre of total affected acreage occurs over the life of the mine.
 - (f) 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.
 - (g) Nonmetallic sand and gravel mines in operation on and prior to the effective date of this ordinance shall not be required to register or to apply for a license under this ordinance. However, upon any substantial change in mining operations, including, but not limited to, the type of material mined, the intensity of mining operations evidenced by hours of operations, tonnage removed, more frequent blasting, enlarging the size of the mine site, adding new manufacturing or processing operations, and/or any change that would require a change in the reclamation plan, the mine will be considered a new operation and will be subject to the requirements of this ordinance.
- (3) An exemption from the requirements of this ordinance does not prevent the Town from requiring the operator of the exempt nonmetallic mining operation to enter into a highway use agreement under Wis. Stat. 349.16 or other authority available to the Town.

Section 1.03. Definitions

- (1) "Nonmetallic minerals" means 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.
- (2) "Nonmetallic mining" means any or all of the following:
 - (a) 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.
 - (b) 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.
 - (c) Manufacturing processes aimed at producing nonmetallic products for sale or use by the operator.
 - (d) Stockpiling of nonmetallic products for sale or use off-site and stockpiling of waste materials.

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- (e) Transport of the extracted nonmetallic materials, finished products or Waste Materials to or from the extraction site.
 - (f) Disposal of Waste Materials.
 - (g) Reclamation of the extraction site.
- (3) "Waste Material" means the non-marketable by-product that results directly from or is displaced by extraction or that is a by-product of a manufacturing process that is scheduled for disposal at the extraction site or some other site as part of a reclamation plan.
- (4) A "mine site" or "site" means land 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.
- (5) "Landowner" means the person who has title to land in fee simple or who holds a land contract for the land.
- (6) "Adjacent landowner" means the owner of any property within 1/2 mile of the proposed mine site and is not part of the area for which an operator's license is being sought, regardless of whether there is a residence or structure on the property, and regardless of whether the property is contiguous to the mine site.
- (7) "Adjacent property or parcel" means a property within 1/2 mile of a nonmetallic mining site proposed and/or licensed under this ordinance and not part of the area for which an operator's license is being sought, regardless of whether there is a residence or structure on the land and regardless of whether the land is contiguous to the nonmetallic mining site.
- (8) "Adjoining Landowner" means a Landowner whose property lies directly next to the proposed Mine Site, and is not part of the area for which an operator's license is being sought, regardless of whether there is a residence or other structure on the property.
- (9) "Town" means the Town of El Paso.
- (10) "Town Board", means the Town Board of the Town of El Paso.
- (11) "Operator" means 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.
- (12) "Operator's license" or "license" means the license required of mining operators in this Section to undertake nonmetallic mining in the Town of El Paso.
- (13) "Person" means any Person, partnership, corporation or other form of association.

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Section 1.04. License Required

- (1) License Requirement. No person shall operate a nonmetallic mine within the scope of this Ordinance in the Town of El Paso without first obtaining an operator's license from the Town Board.
- (2) License Term
 - (a) An initial operator's license shall be for up to one year commencing on July 1 and ending on June 30 of the following calendar year. After the successful conclusion of the initial operator's license term, a renewal operator's license may be granted for up to a three (3) year period. The Town Board may renew an operator's license for less than three years if, in its discretion, the Town Board determines that a shorter term is necessary to protect the public health, safety, and welfare, due to site conditions, operations during the previous year require closer monitoring, or other similar circumstances require a shorter term.
 - (b) An operator's license may be renewed as set forth in Section 1.08.
- (3) License Amendment. If the Town has issued an operator's license, the operator may apply for an amendment to that license during the license term, using the same process as the original license application.
- (4) License Transfer. An operator's license affecting an operator in good standing is transferable during the license term only after the new operator demonstrates to the Town Board that it meets all Town license requirements including that the new operator and the nonmetallic mine for which license is sought to be transferred will continue to meet all Town, County, State and Federal laws and regulations that apply to either; the proposed transferee operator is an individual or entity properly formed and authorized to do business in Wisconsin; a written assignment is presented to the Town that requires the proposed transferee operator to assume every obligation of the licensed operator; the proposed transferee operator provides financial assurances acceptable to the town for purposes of meeting all obligations required by the town, county, or state; has obtained the transfer of any Pierce County Reclamation Permit required to assume the operation, has posted the full financial security required by the County Permit, assumed every responsibility under any Town or County Road Agreement related to the nonmetallic mining operation, posted the full financial security required under any such Road Agreement, and the transfer is approved by the Town Board, following a public hearing preceded by not less than thirty (30) days notice of the proposed transfer to adjoining landowners.
- (5) License Revocation. An operator's license may be revoked under the procedures in Section 1.09.
- (6) Registration License. Nonmetallic mining operations that meet all of the following criteria may apply for a registration license under Section 1.07 (7) in lieu of an operator's license:
 - (a) Less than 5 acres of total affected acreage will be occupied by the nonmetallic mining operation during the life of the mine or the processing facility.

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- (b) The nonmetallic mining operation will not involve blasting.
- (c) The nonmetallic mining operation will not involve processing of materials brought in from off-site or washing of materials mined on-site.
- (d) The nonmetallic mining operation will not involve mining to a depth below the point one hundred (100) feet above the groundwater table.
- (e) No flocculants, settling agents or chemical additives or treatments for nonmetallic minerals will be used or involved in on-site nonmetallic mining operations or stored on-site.
- (f) No existing woodlands or slopes greater than 3:1 will be occupied or adversely affected by the nonmetallic mining operation.

Section 1.05. Procedures For Applying For A License To Mine

- (1) Application Form. The Application Form for a license to operate a non-metallic mine in the Town of El Paso shall be available from the Town Clerk.
- (2) Application Submittal. The applicant shall submit five (5) copies of the Application Form and all required documentation required under Section 1.06 to the Town Clerk accompanied by the payment of both the application fee and the base administrative fee established for the administration of this Ordinance in amounts set forth in the Town of El Paso Schedule of Administrative Fees and Forfeitures. The fees shall be made payable to "Treasurer, Town of El Paso." The Application Form shall be signed by the operator and by the landowner, if the landowner is a person other than the operator.
- (3) Initial Review by the Town Board.
 - (a) Preliminary Review. 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. If no additional information or expertise is deemed necessary the Town Board shall schedule the application for a hearing under sub. (4).
 - (b) Additional Information. The Town Board may request the applicant to submit additional information if the Town Board determines that the application is incomplete. The Town Board may also retain the services of an engineering firm or other qualified person with appropriate expertise ("retained expert") to review the application and report to the Town Board whether additional information is required for review of the application and to determine whether the application meets the standards of this Ordinance.
 - (c) Additional fees. If the Town Board determines that additional expertise is required, the Town Board shall authorize retaining the services of an engineering firm 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 the services of any such retained expert. Any additional fee shall be paid before the additional review is undertaken.

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- (d) 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 application meets the requirements of this Ordinance.

(4) Decision by the Town Board.

- (a) Notice and Hearing. Once the application is complete and any report by a retained expert has been completed, the Town Clerk shall place the application on the agenda for the next regular meeting of the Town Board. If a special meeting is warranted, the applicant shall pay the additional fees incurred for the special meeting. The Town Board shall set a date for a public hearing and give public notice at least fifteen (15) days prior to the date scheduled for the hearing, with the notice mailed to all adjoining and adjacent landowners. At the public hearing, the Town Board shall take public comment on the proposed mine license.
- (b) Town Board Decision. Following the public hearing, the Town Board may take immediate action if properly noticed (or set a date for the meeting) at which time the Town Board shall make a final decision on the operator's license. If a special meeting is warranted, the applicant shall pay the additional fees incurred for the special meeting. The Town Board shall review the retained expert's report as well as public comments made at the public hearing. The Town Board shall grant the license if it determines that the operation of the mine will be consistent with the minimum standards and the purposes of this Ordinance. If the Town Board denies the license, the applicant may request a hearing under the provisions of Section 1.09(3).

Section 1.06. License Application

All applicants for a mining license shall submit the following information:

(1) Ownership Information.

- (a) The name, address, phone number(s), and e-mail address of the operator of the nonmetallic mining operation.
- (b) The name, address, phone number(s), and e-mail address of all owners or lessees of the land on which the mining operation will occur.
- (c) 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.

(2) Site Information and Maps.

- (a) An ATLA land survey and parcel identification number(s) of the property on which the nonmetallic mining operation will be located.
- (b) An aerial photo of the proposed site at a scale of 1 inch equals 660 feet signed by both the operator and the landowner.

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- (c) A topographic map of the mine site extending 1 mile beyond the site boundaries at contour intervals no wider than 10 feet showing the boundaries of the site, the location and total acreage of the site, and the name of all roads within one mile of the site.
- (d) The location within the site of all existing buildings and other structures, equipment, stockpiles, storage and parking areas.
- (e) A map on which all residential, agricultural and municipal wells within 1 mile of the boundaries of the site in all directions are marked and given a numerical identification of the location.
- (f) 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 the site and within 1 mile of the site.
- (g) 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.
- (h) A map identifying the location of all other non-contiguous sites within the Town of El Paso 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.

(3) Operation Plan

- (a) Dates of the planned commencement and cessation of the operation.
- (b) Description of mining methods, machinery and equipment to be used for extraction and processing of the extracted material, and the sequence of operations.
- (c) Estimated volume of material to be extracted over the life of the mine and for the next calendar year.
- (d) Location of road access points. The proposed location within the site of all buildings and other structures, equipment, stockpiles, storage and parking areas.
- (e) Identification of all proposed 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.
- (f) 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.
- (g) 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.
- (h) A listing of all chemicals used in the manufacturing or processing operations or in controlling dust.

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(4) Information Demonstrating Compliance with Minimum Standards.

- (a) The operator shall provide the information necessary to demonstrate that the mining operation will comply with the minimum standards in Section 1.07.
- (b) 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 groundwater elevation across the site, groundwater quality at the site 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 the base flow of surface water within 1/2 mile of the site.

(5) Exceptions. The applicant can request an exception from the application requirements of this section if it can demonstrate 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 be adversely affected thereby.

Section 1.07. Minimum Standards of Operation

The Town Board may grant a license to mine if the applicant can demonstrate that the following minimum standards of operation will be met:

(1) General Standards.

- (a) The operator shall stake or otherwise mark the borders of the entire site and shall secure the site by fencing or other appropriate measures.
- (b) The operator shall demonstrate compliance with all of the other provisions of this Ordinance.
- (c) Surveys and blasting logs shall be provided to the Town and any Adjoining Landowner and Adjoining Landowners within forty-eight (48) hours of written request. All blasting, bumping and use of explosives shall be conducted strictly in compliance with Wis. Admin. Code Ch. SPS 307 and be preceded by twenty-four (24) hours notice to Adjoining and Adjacent Landowners and any other Town resident who files written request for notification with the operator. Blasting shall occur only between 10:00 a.m. and 3:00 p.m., except that blasting may occur after 3:00 p.m. when required for safety reasons beyond the reasonable control of the operator. The ground vibration requirements of SPS 307 shall apply to protect all Adjoining Landowners when that area is greater than the area defined by the blasting level chart in SPS 307.44 (Figure 7.44).
- (d) The operator shall demonstrate that all other applicable federal, state and local permits and approvals required for the nonmetallic mining operation have been or will be obtained prior to commencement of operation.
- (e) The operator shall provide notification to the Town in writing of any notices of violation, citations, or other enforcement actions taken by any other governmental body against the mining operation.

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(2) Standards Regarding Off-Site Impacts.

- (a) 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 adjacent properties, surface water and groundwater, and shall also comply with the standards for erosion control under Wisconsin Administrative Code NR 216 and NR 151 as applicable and its stormwater Pollution Prevention Plan submitted with its application.
- (b) In the event that the mine site contains areas adjacent to the 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 from entering mining operations or otherwise causing contamination of surface water and groundwater.
- (c) The operator shall provide a buffer area of a minimum of 100 feet along perimeter boundary lines of the mine site and public roadways.
- (d) The operator shall screen the mining operations from public view to the maximum extent practicable through the use of vegetated berms, additional setbacks or other measures.
- (e) The operator shall limit normal hours of operations to 10 hours a day Monday through Friday during daylight hours and not later than 6:00 pm to minimize off-site impacts to residents. The operator may submit an application for extended hours as an exception from the standards, if it can demonstrate that additional hours are necessary for the mining operation and it would be consistent with public, health safety and welfare.
- (f) The operator shall ensure that trucks from the mining site shall not interfere with the safety of children being taken or returned from school, or the safety of residents and commuters at times when traffic volume from commuters going to and from work is highest. The use of compression release engine brakes (Jake brakes) is allowed only in emergency situations. All trucks hauling nonmetallic minerals and/or nonmetallic mining waste material to and from a nonmetallic mine site shall have the loaded material completely covered by a mechanical tarp or covering device specific to the hauling truck and maintained in good condition.
- (g) The operator shall limit night lighting on site, to that which is minimally necessary for security and, wherever possible, shall be shielded from illuminating off-site areas. Every effort consistent with legal requirements for aerial safety shall be made to minimize illumination of the night sky.
- (h) The operator shall utilize all relevant dust control measures specified in Wis. Admin. Code § NR 415.075.
- (i) The operator shall use best management practices to keep the noise generated by all nonmetallic mining operations at or below sixty (60) decibels at the site perimeter, to the maximum extent practicable. The operator shall control off-site noise levels to the maximum extent practicable.
- (j) An Operator's license applicant or renewal applicant shall provide: 1) fully executed road

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agreements between the applicant and each town and county with jurisdiction over all roads designated as preferred or alternate routes in the applicant's Operational Plan and located between the nonmetallic mining site, any processing plant for the nonmetallic minerals removed from the mine site, and the state or federal highway or railroad spur used to transport processed or unprocessed nonmetallic minerals out of the area; or 2) documentation from each such county or town showing that such town or county has reviewed the matter and is not requiring any such road agreement.

- (k) Nonmetallic mine waste material shall be returned after any off-site processing only to the mine site from which it originated, and only when authorized or required to be returned pursuant to the mine site's County Reclamation Permit. The Town's retained experts shall regularly test the nonmetallic mining waste material to determine whether the material and the volume of material being returned is reasonably likely to have originated from the licensed operation and to determine whether the returned nonmetallic mine waste material has been treated with unauthorized or undisclosed substances after extraction. Operators are responsible for identifying to the Town all substances being used in the processing of nonmetallic minerals and for providing load and weight information that will allow the Town to determine whether the quantities of waste material being returned are reasonably likely to have originated from the licensed operation.

(3) Standards Regarding Groundwater and Surface Water.

(a) Impacts to Groundwater Quality.

- (i) Mining operations shall have at least one monitoring well for every 2-acre sector of the mine site, and the operator shall take quarterly samples 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.
- (ii) Mining operations shall not cause an exceedance of groundwater quality standards in Wis. Admin. Code ch. NR 140. If test results exceed Preventive Action Limit water quality standards in any on-site or private well, groundwater quality testing shall immediately be undertaken in an expanded area as recommended by the Town's retained experts. In certain cases, as established by a health professional or Town Engineer, the operator shall provide potable water until the well issues have been resolved.

(b) Impacts to Groundwater Quantity.

- (i) Mining operations shall not extract materials at a depth below the point that is 30 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 1 mile of the mine site. A significant reduction is a drop in the water table that results in a substantial adverse impact on a private well including but not limited to the inability of a well to provide water on a continuous basis.

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- (c) Impacts to Surface Water Base Flow. Mining operations shall not cause a lowering of the groundwater table that results in adverse effects on surface waters within 1/2 mile of the perimeter line of the mine site, including but not limited to, a reduction of water in streams and tributaries to or below base flows established prior to the beginning of mining operation.
- (d) Impacts to Surface Water Use. 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 1/2 mile of the perimeter line of the mine site. 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 mining operation.

(4) Hazardous materials.

- (a) All hazardous chemicals shall be stored, used and disposed of in accordance with applicable state and federal law.
- (b) The operator shall not dispose of solid or hazardous waste materials containing any hazardous chemicals in toxic amounts, or residuals declared to be hazardous by a government agency in toxic amounts.
- (c) The operator shall have a plan for responding to spills of any hazardous materials on the site.

(5) Town Roads.

When trucks used in the nonmetallic mining operation will haul nonmetallic minerals or nonmetallic mining waste material over Town roads as a designated haul route, the operator shall first enter into a separate road use agreement pursuant to Wis. Stats. § 349.16, the purpose of which shall be to fund a complete traffic impact analysis of the Town road at issue and the highway upgrades, maintenance and repair of the road during the license term for the convenience and safety of the traveling public and to prevent financial burdens from being imposed on Town taxpayers due to road use in association with a nonmetallic mining operation. The road use agreement shall be in place before a license is issued or renewed under this ordinance.

(6) Exceptions from and Additions to Minimum Standards.

- (a) The operator can request a special exception from the minimum standards of this Section if it can demonstrate that the intent of this Section can be achieved by the use of alternative measures and that the public health, safety and welfare will not be adversely affected thereby.
- (b) The Town Board can impose requirements in addition to or exceeding the minimum standards if it has evidence that the public health safety and welfare will not be adequately protected without the imposition of additional measures.

(7) Registration License.

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- (a) For nonmetallic mining operations that meet the criteria for a registration license set out in Section 1.04(7), the Town Board shall grant a registration license after the operator submits the following information to the Town Board:
 - (i) Certification from the operator and confirmed by the Town's retained expert, that the operation meets the applicable requirements in Section 1.07 of this Ordinance.
 - (ii) Ownership information required by Section 1.06 of this Ordinance.
 - (iii) A copy of any reclamation plans and license on file with Pierce County and any licenses issued by other federal, state or local agencies for the nonmetallic mining operation on that site.
 - (iv) An operation plan that applies best management practices to control noise, dust, light, surface water runoff and other off-site impacts from the operation. The Town's retained expert shall determine whether best management practices are present in the operation plan.
- (b) The Town may require additional operation-specific information after application review.
- (c) Registration licenses shall be subject to renewal every three years and are subject to all observation and enforcement provisions of this Ordinance.

Section 1.08. Annual Report and License Renewal

(1) Annual Report.

- (a) No later than March 1 of each calendar year, the operator shall submit an annual report to the Town Board for all nonmetallic mining sites for which the operator has a license in the Town of El Paso.
- (b) The annual report shall include the following information:
 - (i) Identification of the licensed operator and map showing the location of the nonmetallic mining site, active nonmetallic mining areas on the site, anticipated areas of nonmetallic mining activity and reclamation activity occurring presently and during the coming year, showing the number of acres for each, and disclosure of any ways in which the coming year's plan differs from the information in the license application materials.
 - (ii) A map or drawing accurately showing the planned areas of excavation, currently unreclaimed area and reclaimed area, showing the number of acres for each type.
 - (iii) A description of activities and operations on the nonmetallic mining site during the previous calendar year including actual days and hours of

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operation, volume of nonmetallic minerals mined, volume transported off-site and volume and location of nonmetallic minerals waste materials on-site, with load counts, weights, and tickets available on request and disclosure of any ways in which the coming year's plan differs from the information in the license application materials..

- (iv) A description of activities and operations on the site anticipated for the following calendar year and disclosure of any ways in which the coming year's plan differs from the information in the license application materials.
- (v) A written report describing how the operator has been in compliance with all terms and conditions of its license and this ordinance, including all groundwater, surface water and other monitoring results.
- (vi) A description of all areas of non-compliance with the operator's license, and a plan for bringing all such non-compliant areas of operation into compliance, with summaries of all complaints received from adjoining landowners and members of the public since the last report, explaining how each complaint was mitigated or otherwise addressed.
- (vii) Certification that the nonmetallic mining operation continues to meet or exceed the minimum standards of this Ordinance.

(2) License Renewal.

- (a) The operator shall make written application to the Town Clerk for a renewal of the license to operate the mine no later than March 1 of the year in which the license will expire. The application shall be accompanied by the payment of both the renewal application fee and the base administrative fee established for the administration of this Ordinance in amounts set forth in the Town of El Paso Schedule of Fees and Forfeitures.
- (b) The written request for renewal shall include the annual report from the previous calendar year in accordance with the provisions of subsection (1).
- (c) The Town Clerk shall review the renewal application within 30 days of receipt to determine whether the application is complete and upon a determination that it is complete shall forward it to the Town Board.
- (d) **Additional Information and Fees** The Town Board shall review the renewal application to determine if additional information from the operator or additional expertise is necessary to properly evaluate the application. The Town's retained experts and all fees related to processing the renewal application shall be paid from the administrative fee deposit, which shall be replenished in like amount by the license renewal applicant upon written notice from the Clerk. Maintaining the administrative fee deposit is a condition of Town processing of the license renewal application, amounts so deposited shall be held and used by the Town to pay administrative costs and for its retained experts and legal fees, and all requirements of

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Section 5(3)(c) of this Ordinance apply to a license renewal application administrative fee deposit.

- (e) Once the applicant has submitted any additional information and has paid the additional administrative fee in the amount charged, the Town's retained expert shall report to the Town Board on whether the renewal application meets the requirements of this Section. The Town Clerk shall place the request on the agenda of the next regular meeting or a special meeting of the Town Board prior to the expiration of the license. The Operator shall pay the cost of any special meeting.
- (f) The Town Board may grant the application for renewal if it finds:
 - (i) there have been no material violations of the Section 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 Section.
 - (iii) all applicable fees have been paid and financial responsibility requirements have been met.
 - (iv) The nonmetallic mining operation will continue to meet or exceed the minimum standards of this ordinance.
- (g) If the Town Board denies an application for license renewal, the Town Board shall notify the operator of the denial and the stated grounds for denial, in writing. The operator shall have fifteen (15) days from receipt of notification to request a public hearing, provide additional information and request that the Town Board reconsider its denial.

Section 1.09. Inspection, Enforcement, Procedures and Penalties

- (1) Inspection. In addition to an annual inspection pursuant to Section 1.08(2), 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 El Paso 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. The Town official or designated representative may have access to the mining site without advance notice in circumstances in which the Town has reasonable cause to believe that there is some condition, violation, or problem at the site that constitutes a threat of imminent harm to the public health, safety, or welfare.
- (2) Violations. The following are violations under this Ordinance:
 - (a) Engaging in nonmetallic mining without an operator's license granted by the Town Board.
 - (b) Failure to comply with the minimum standards and other terms of this Ordinance.

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- (c) Making an 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.
- (d) Failure to timely file the annual operational report under Section 1.08.
- (e) Failure to take appropriate action in response to a notice of violation, citation, request for additional financial assurance under Section 1.10 or other order issued by the Town.
- (f) Failure to comply with all federal, state, county and local laws and regulations that govern or affect the operator's nonmetallic-mining operation.

(3) Hearings

- (a) Any person affected by a notice and order issued in connection with the enforcement of this Ordinance under this Section 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. Such petition shall be filed within fifteen days of the date the notice and order are served or within fifteen days of denial of an initial application or an application for renewal. 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.
- (b) After the hearing, the Town Board by a majority vote, shall sustain, modify or withdraw the notice under sub, (4), 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 days in writing of such findings.
- (c) 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. Such record shall also include a copy of every notice and order issued in connection with the case.

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

- (a) Issue a stop work order.
- (b) Issue a notice of violation and order that specifies the action to be taken to remedy a situation, within any deadline set to do so in the notice or order. If the operator fails to complete the action specified in the notice of violation within the deadline stated in the notice, the Town may complete the required action and recover the cost of doing so from the operator, or from the property owner if different from the operator.
- (c) Issue a citation in accord with the Town of El Paso citation ordinance.

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- (d) Refer the matter to legal counsel for consideration and commencement of legal action including the assessment of penalties under sub (6) and injunctive relief.
- (e) Suspend or revoke the operator's license for any violation of this ordinance after notice and hearing under Section 1.09(3). When an operator's license is revoked, all rights thereunder shall terminate immediately. The only nonmetallic mining operation that may be engaged in after license revocation shall be reclamation activity conducted in compliance with the requirements of the operator's reclamation permit from Pierce County.

(5) Penalties.

- (a) Any person or entity who is adjudicated to have violated this ordinance shall pay a forfeiture of not less than \$500 per violation nor more than \$5000 per violation and/or be subject to injunctive relief. Each day a violation exists is a separate violation.
 - (b) Any person or entity adjudicated for violation of this Ordinance shall pay court costs and the Town's actual attorney's fees and actual costs of the Town's retained experts, to the extent not paid from an existing administrative fee deposit, in addition to any forfeiture. The remedies provided herein shall not be exclusive of other remedies.
- (6) 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 1.10. Financial Assurance

- (1) Financial assurance shall be provided to the Town as a condition of license approval in the amount of 125% of the estimated amount necessary for the following: Road repair. An amount necessary for the repair and maintenance of Town roads used for truck traffic transporting materials to or from the site. (Said road shall be maintained to specifications appropriate to weight and use volume according to the Wisconsin Statutes.)
 - (a) Water Supply. An amount necessary to provide an alternative water supply to potentially affected residences or agricultural operations within 1/2 mile of the site or such other area shown to be adversely impacted by the operator's operations.
- (2) The form of financial assurance made to the Town of El Paso shall be that form approved by the Town Board and may include irrevocable letters of credit, cash deposit or other measures, in a form and for a term approved by the Town Board.
- (3) In the event the Town 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. The operator shall have 15 days to provide the increased amount.
- (4) The operator shall also provide to the Town proof that it has provided the financial assurance for reclamation required under Wisconsin law.

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Section 1.11. Damages to Private Water Supply

- (1) A property owner within the area affected by the mine site may seek remedies under subs (2)-(5) for any of the following damages to private water supply:
 - (a) A preventative action limit or enforcement standard under Wis. Admin. Code NR Ch. 140 is exceeded in a private water supply well on the owner's property.
 - (b) 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.
 - (c) A lowering of surface waters which serve as a source of water for personal, agricultural or municipal functions on the owner's property to levels below base flow levels for more than 5 days.
- (2) Any property owner under sub (1) 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 sub (1) explaining the nature and extent of the problem.
- (3) Within 24 hours of receipt of such notice under sub (2), the Town may use funds provided under Section 1.10 to provide an adequate interim water supply. The Town shall also use funds under Section 1.10 to indemnify the Town for any claims filed under Wis. Stat. § 281.77(4). An interim water supply shall continue until the Town has approved the report or plan under sub (4).
- (4) Within 20 days of receipt of notice under sub (2), the mine operator shall provide to the property owner and to the Town a report that can be verified by the Town's retained expert and/or the affected landowner, demonstrating that the impact to the property owner is not attributable to the mining operation or if the impact is attributable to the nonmetallic mining operation to present a plan for a permanent alternative water supply to be paid by the operator.
- (5) A property owner beyond 1 and 1/2 mile of the mine site may apply to the Town for use of funds under Section 1.10 to remedy damages to a private water supply identified in sub (1), provided that the property owner can demonstrate to the Town that the damage to the private water supply was caused by the mine. If the Town determines that the damage was caused by the mine, the property owner can utilize the remedies in subs (2) to (4).''

This remedy is in addition to any other legal remedies available to the affected landowner.

Section 1.12. Severability, Interpretation, and Abrogation

- (1) Severability.

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- (a) Should any section, clause, 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.
- (b) 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.
- (2) The provisions of this Ordinance shall be liberally construed in favor of the Town of El Paso and shall not be construed to be a limitation or a repeal of any other power now possessed or granted to the Town of El Paso.
- (3) This Ordinance is not intended to repeal, annul or interfere with any easements, covenants, deed restrictions or agreements created prior to the effective date of this Ordinance.

Section 1.13. Mining Agreement

- (1) The Town Board may require the applicant to enter into a written recordable Nonmetallic Mining Operator's Agreement specifying the requirements and conditions of the Operator's License if a license is approved. Any provisions of this Ordinance may be modified in such a written Mining Agreement between the Town and an operator if the Town Board first determines that the Agreement will protect public health, safety and welfare at least as well as the protections provided by this Ordinance. The Town Board shall consider information and opinions from the Town's retained experts in making this agreement. Costs of negotiating, preparing, reviewing, and enforcing this Mining Operator's Agreement shall be paid by the Operator, including, but not limited to all professional fees the Town incurs related to the Mining Operator's Agreement. The Town Board may require the applicant to submit a cash deposit in an amount estimated to pay the costs associated with negotiating, preparing, reviewing and enforcing the Mining Operator's Agreement. If the deposit is not sufficient to cover the costs, the applicant shall pay additional amounts to cover the costs before the Town executes the Agreement. Any amounts exceeding the actual costs shall be returned to the applicant.
- (2) Section 1.14. Non-Liability: Issuance of a license under this Ordinance does not guarantee, warrant, represent or subject the Town to liability for any defects in plans or specifications, false information provided, plan omissions, examination or inspection oversight, construction or damage that may result in the Nonmetallic Mining or Manufacturing Process, or any claims for damages to persons allegedly caused by the non-metallic mine.

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- (3) The Town shall have no liability for any claims for personal injury or property damage arising out of the Nonmetallic Mining operation, or the issuance of a license for such Nonmetallic Mining Operation under the terms and conditions of this Ordinance.
- (4) The Town shall have no obligation to pursue legal remedies available to private property owners for any types of damage claims arising out a nonmetallic mining operation in the Town.

Section 1.15. Effective Date

This ordinance is effective upon publication as required by law.

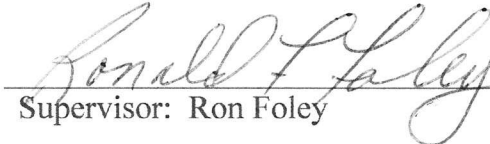
The town clerk shall properly publish this ordinance or a Notice of Summary of this ordinance as required under s.60.80, Wis. Stats.

Adopted this 9th day of Dec. 2013.

TOWN OF EL PASO TOWN BOARD


Chairperson: Ronald Kannel


Supervisor: Daniel Fischer


Supervisor: Ron Foley

I, Melanie J. Schoepp, Clerk of the Town of El Paso, Pierce County, Wisconsin, certify that the foregoing is a true, correct and complete copy of an ordinance adopted by the Town Board of the Town of El Paso on Dec. 9, 2013.


Clerk

Summary Published: Pierce County Herald Dec. 18, 2013

