

**THE TOWN OF ROCK, WOOD COUNTY  
NONMETALLIC MINE OPERATOR'S LICENSE ORDINANCE**

**Ordinance 2019-\_\_**

**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 – depending on the size of the mining operation, the type of geological deposit being mined and the manner and methods of mining and processing used – nonmetallic mining can have adverse impacts on property values, groundwater and surface water, and can generate harmful levels of dust and noise particularly if blasting and crushing operations, or washing and drying processes, are undertaken. Nonmetallic mining sites can have negative impacts on the landscape and aesthetics if not properly screened and required to be conducted at an appropriate distance from other types of property uses, and can present safety concerns to members of the public if not properly secured. Nonmetallic mining operations can also generate high volumes of truck traffic that can present safety issues and concerns for the proper and timely maintenance of Town roads, and exposure to nuisances of noise, light pollution, and dust. 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 operations are left unregulated under state or federal law with potential adverse impacts on public health, safety, and welfare of the residents of the Town.

(2) Purpose. The purpose of this Ordinance is to provide minimum standards for large nonmetallic mining operations and processing facilities in the Town and to require licenses for large nonmetallic mining operators and processing facility operators in order to protect public health and safety, to minimize or prevent adverse off-site impacts from on-site and off-site operations, and to promote the general welfare of the people and communities within the Town of Rock.

(3) Authority. This Ordinance is adopted under the powers granted to the Town of Rock by Wis. Stat. §§ 60.10, 60.22 (3), and 61.34, its authority under § 66.0415, and other authority under the statutes, and its adoption of village powers under § 60.10 (2) (c). 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 Rock, including processing facilities, at which extraction, processing or transportation of more than 50,000 cubic yards of material occurs in any calendar year.

(2) This Ordinance does not apply to the following activities:

- (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, airport facility, or any other transportation facility where the excavation or grading is entirely within the property boundaries of the highway, railroad, airport facility, or other transportation facility.
- (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 5 acres of total affected acreage occurs over the life of the mine.
- (f) Any metallic mining operation, the reclamation of which is required in a permit obtained under Wis. Stat. ch. 293 or Wis. Stat. ch. 295, subch. III.
- (g) 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.

**Section 1.03. Definitions**

- (1) “Active operation” means annual excavation of at least 350 cubic yards of nonmetallic minerals.
- (1m) “Buffer” means an undisturbed vegetated area measured from the nonmetallic mine site or processing facility border into the nonmetallic mine site or processing facility, in which no nonmetallic mining activities may occur and no structures or roads may be built or placed, except for the construction and maintenance of a vegetated berm and approved access roads to the property.
- (2) “Dwelling” means a structure or part of a structure that is used or intended to be used and occupied for human habitation as a home or residence by one or more persons.
- (3) “Heavy vehicle” means a vehicle with a gross vehicle weight rating of over 48,000 pounds.

(4) "Karst feature" means an area or surficial geologic feature subject to bedrock dissolution or fracturing so that it is likely to provide a conduit to groundwater, and may include caves, enlarged fractures, mine features, exposed bedrock surfaces, sinkholes, springs, seeps, or swallets.

(5) "Landowner" or "property owner" means the person or entity who has title to land or who holds a land contract for land.

(6) A "mine site" or "site" means land from which mineral aggregates or nonmetallic minerals will be extracted for sale or use by the operator; all land in or contiguous to areas excavated for nonmetallic mining on which any structures, equipment, storage facilities, stockpiles, washing, drying, processing, separation, blending or screening facilities, private roads, or haulage ways associated with nonmetallic mining operation are or will be located; and all contiguous lands to the lands on which these operations occur or will occur that are under common ownership or control of the landowner or operator.

(7) "Neighboring landowner" means any property wholly or partially within 1/2 mile of the proposed mine site or processing facility, regardless of whether there is a residence or structure on the property.

(8) "Nonmetallic minerals" means a product, commodity or material consisting principally of naturally occurring, organic or inorganic, nonmetallic, non-renewable material. Nonmetallic minerals include, but are not limited to, stone, rock, sand, gravel, asbestos, beryl, diamond, clay, coal, feldspar, peat, talc, and topsoil.

(9) "Nonmetallic mining" or "nonmetallic mining operation" 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 industrial processing operations that may involve the use of equipment for the crushing, screening, separation, washing, drying, or blending of mineral aggregates or nonmetallic minerals.

(c) Manufacturing processes intended to produce 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.

(e) Transporting of nonmetallic minerals, products containing nonmetallic minerals, or waste materials to or from an extraction site and/or processing site(s).

- (f) Stockpiling, storing or processing of nonmetallic minerals away from a mine site.
- (g) Disposal of nonmetallic mining waste materials.
- (h) Reclamation of a mine site.
- (10) "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.
- (11) "Operator's license" or "license" means the license required of operators under this Ordinance to undertake nonmetallic mining or processing in the Town of Rock.
- (12) "Planned mining operation" means nonmetallic mining authorized pursuant to Section 1.12 of this Ordinance.
- (13) "Processing facility" or "processing site" means a location away from a mine site on which any facilities, structures, equipment, private roads, or haulage ways associated with nonmetallic storage facilities, stockpiles, washing, drying, processing, separation, blending or screening operations are conducted.  
NOTE: Such processing facilities and operations conducted on the mining site are considered part of the mine site.
- (14) "Retained expert" means professional consultants including but not limited to engineers, attorneys, planners, environmental specialists, and other consultants with skills relevant to reviewing, processing and acting upon an application for an operator license or planned mining operation or relevant to issues associated with the inspection, monitoring and enforcing of this Ordinance.
- (15) "Town" means the Town of Rock.
- (16) "Town Board" means the Town Board of Supervisors of the Town of Rock.
- (17) "Waste Material" means the 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.

#### **Section 1.04. License Required**

- (1) License Requirement. Except as provided in sub (6), (7), or (8), and subject to Section 1.02, no person shall operate a nonmetallic mine or processing facility in the Town without first obtaining a license from the Town Board ("operator's license"). The process for applying for an operator's license is provided in Section 1.05 (1).

(2) License Term. An initial license shall be granted for a period of at least one year, extending from the date of issuance through the first full 12-month period after the license is issued and ending on June 30 following the end of that 12-month period. A license renewal under Section 1.05 (2) may be for a term of up to three years. The Town Board may approve a license renewal for a period of less than three years if the Town Board, in its sole discretion, determines that a shorter renewal term is necessary to protect the public health, safety, or welfare because of specific actions of the operator or conditions present on the mine site during previous license terms, or other concerns of the Town Board that are based on substantial evidence.

(3) 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 applies to an original license application.

(4) License Transfer. An operator's license may not be assigned or transferred without the express written consent of the Town. Any transfer without Town approval, including any involuntary transfer, invalidates a license.

(5) License Revocation. An operator's license may be suspended or revoked under the procedures in Section 1.09.

(6) Existing Facilities. A Non-metallic sand and gravel mine in operation prior to the effective date of this ordinance, to which Subsection (8) does not apply, is eligible for a registration license under this subsection provided that the operation meets the following requirements:

(a) The operation has been in existence and under active operation for at least 4 of the previous 8 years and during that time has not had a material violation of state or local law that was not timely cured and has not been found by a court of competent jurisdiction to have created a nuisance condition.

(b) The nonmetallic mining operation does not extract or process more than (insert volume) cubic yards in any 1 calendar year.

(c) The operation has a reclamation permit from Wood County, and files a copy of the reclamation permit and any reclamation plans with the Town.

(d) The operation is for the original reclamation plan approved by Wood County. If the reclamation plan or permit are modified, other than to change the operator or responsible party, the mine is considered a new operation and is subject to the general licensing requirements of this ordinance.

(e) The operator files a certification with the Town Board that it will use best management practices to control noise, dust, light, surface water runoff, and other off-site impacts from the operations.

(f) Notwithstanding Subsection (2), the term of an initial registration license is two years. Registration licenses are eligible for renewal for four years, as provided in Section 1.05 (2) and subject to the inspection, enforcement, procedures, and penalties under Section 1.09.

(7) Planned Mining Operation. A person may operate a nonmetallic mine or processing facility if the person has obtained approval of a planned mining operation in accordance with Section 1.12.

(8) Previously Licensed Operations. Without obtaining a license under this ordinance, a person may operate a nonmetallic mine or processing facility for which the Town has issued a license or conditional use permit to the person, or a previous operator, prior to the effective date of this Ordinance or for which the Town and the person or a previous operator have entered into an operations or developer agreement prior to the effective date of this Ordinance. Such operation may continue for the term specified in the license, permit, or agreement and under the terms and conditions specified in the license, permit, or agreement, subject to the terms and requirements of any Town ordinance that was in place at the time of the execution or approval of the license, permit, or agreement. Unless otherwise required in the license, permit, or agreement applicable to a nonmetallic mine or processing facility, this Subsection does not apply to a nonmetallic mine or processing facility that ceases active operation for 5 years.

(9) License Renewal. An operator's license may be renewed as set forth in Section 1.05.

**Section 1.05. Procedures for Applying for an Operator's License or Renewal of an Approval.**

(1) Application for an Operator's License. The applicant shall submit 5 copies of an application that contains all required documentation required under Section 1.06 to the Town Clerk, accompanied by the payment of the appropriate fees as set forth herein. The application shall be signed by the operator and each landowner that is a person or other legal entity that is different than the operator.

(2) Application for Renewal of a License.

(a) The operator shall make written request to the Town Clerk for a renewal of the license to operate the mine no later than April 1 of the year in which the license will expire. The application shall be accompanied by the payment of the fee and the execution of a cost reimbursement agreement under sub (3).

(b) The written request for renewal shall incorporate by reference the annual reports under Section 1.08 (2) from the previous calendar years.

(3) Fees and Reimbursement of Costs.

(a) Reimbursable Costs:

1. Time spent by the Town Clerk and other Town staff in the review and processing of the application for an operator's license or renewal of an approval, including time spent related to or negotiating an agreement for a planned mining operation.
2. The cost of services of one or more retained experts retained by the Town to review, process, and act upon an application for an operator license or planned mining operation, or a renewal of such an approval, including time spent negotiating an agreement for a planned mining operation.
3. All other costs reasonably incurred by the Town relating to the proposed project or renewal, including for copying, mailing, posting, public notice, Town meeting costs, Town Board per diem payments for special meetings, or other related costs.
4. Costs during the term of a project for reasonable staff time, retained experts, and other costs to review reports submitted by the operator; to assess issues that arise relating to the project; to inspect the mine site or processing facility; to evaluate compliance by the operator; to enforce the terms of this Ordinance and any agreement executed between the Town and the operator; and to report from time to time to the Town Board regarding these matters.

(b) Preliminary Cost Reimbursement Agreement. At the time an application for approval of an operator's license or planned mining operation, or application for renewal of an approval, is filed with the Town, the applicant shall execute for the benefit of the Town an agreement under which the applicant agrees to pay and agrees to provide adequate security guaranteeing payment of the reimbursable costs. The agreement and the security shall be in an amount and a form acceptable to the Town, but the initial security for an initial application for approval may not be less than a payment of \$30,000, adjusted for inflation annually after the effective date of this ordinance, to be held in escrow by the Town. The Town is not required to begin processing the application or approval renewal until the preliminary cost reimbursement agreement is approved and signed and until the required security is provided to the Town. The Town may accept an initial deposit to begin license or renewal processing and to provide an estimate to the applicant of anticipated costs, but it shall not be required to incur any costs beyond those for which a deposit or other security has been approved and received.

(c) Fees. The application fee for an operator's license, a registration license, or planned mining operation is \$1,000 and the fee for an application for renewal of an approval is \$500.

(4) Preliminary Review, Preliminary Hearing, and Proposed Decision.

(a) Preliminary Review. The Town Clerk shall forward an application or a request for renewal to the Town Board for initial review to determine if additional information or expertise is necessary to properly evaluate the application.

(b) Additional Information. The Town Board may request that the applicant submit additional information if the Town Board determines that the application or request for renewal is incomplete, or if the Town Board determines that additional information is needed to determine whether the requested approval will meet the requirements of this Ordinance.

(d) Proposed Decision. Upon completion of its review of the application and a review of any report from retained experts, the Town Board shall issue a proposed decision on whether to grant a license to operate a nonmetallic mine or processing facility, or grant a request to renew an approval, with or without conditions, or to deny the application or request.

(5) Decision by the Town Board.

(a) Notice and Hearing; Proposed Decision. Upon the issuance of a proposed decision under sub. (4) (d), the Town Clerk shall place the preliminary decision of the Town Board on the Town's website and make it available for public inspection at the Town Hall. The Town Board shall set a date for a public hearing on the preliminary decision and, for an application for an operator's license, give Class II public notice and post the notice in the designated posting places at least 15 days prior to the date scheduled for the hearing, and mail the notice to all neighboring landowners. At the public hearing, the Town Board shall take public comment on the proposed decision.

(b) Town Board Final Decision. Following the receipt of public comments at the public hearing and any submitted written comments, the Town Board may make a final decision whether to grant a license to operate a nonmetallic mine or processing facility or to renew a license, or set a date for a subsequent Town Board meeting during which the Town Board will make a final decision.

(c) Basis of Proposed and Final Decisions. The Town Board shall base its proposed and final decisions on a review of the application, any available retained experts' reports, public comments and information provided at the public hearing, and other relevant information at the discretion of the Town Board.

(d) In the case of an application for an operator's license, the Town Board shall grant the license if it determines that the operation of the nonmetallic mine or processing facility will be consistent with the standards and the purposes of this Ordinance.



(e) In the case of an application for approval of a planned mining operation, the Town Board may, in its sole discretion, approve or deny the planned mining operation.

(f) In the case of a request for renewal of a license, The Town Board shall grant the request for renewal if it finds that there have been no material violations of the Ordinance or the license which have not been appropriately remedied, the operator has not received multiple or recurring citations or orders for violations of the operator's license or this Ordinance, and all applicable fees have been paid and financial responsibility requirements have been met.

(g) If the Town Board denies an application for an operator's license or denies a request for renewal of a license, the Town Board shall notify the applicant and inform the applicant about the opportunity to request a hearing under Section 1.09 (3).

### **Section 1.06. Application Contents.**

All applicants for an operator's license and all applicants for approval of a planned mining operation shall submit the information required in this section. The applicant may provide this information by reference to other documents submitted to other governmental agencies, but in such cases shall provide a copy of the referenced document and a specific cross reference identifying where the information required by this section is located in any referenced material.

#### **(1) Ownership Information.**

(a) The name, address, phone number, and email address of the operator.

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

(c) If the operator does not own the proposed mine site or processing facility, 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.

(d) Proof that all assessed property taxes on the proposed mine site or processing facility have been paid.

#### **(2) Site Information and Maps.**

(a) Parcel identification numbers of all contiguous parcels owned or controlled by the operator and each landowner/lessor of property on which the nonmetallic mining operation will be located and that are contiguous to those parcels. Survey maps shall be provided for all parcels.

(b) An aerial photo of the proposed site at a scale of not less than 1 inch equals 330 feet.

(c) A topographic map of the nonmetallic mine site or processing facility extending 1 mile beyond the site boundaries at contour intervals no wider than 5 feet showing the boundaries of the site, the location and total acreage of the site, and the name of all roads within 1 mile of the site, prepared by a registered engineer or a licensed surveyor. All known karst features, such as sinkholes, shall be labeled and described on the map.

(d) A site plan for the nonmetallic mine site or processing facility, prepared by a registered engineer or a licensed surveyor, showing the location within the site of all existing and proposed buildings and other structures, equipment, stockpiles, storage and parking areas; road access points; locations where the operator proposes to cross over or under roads with conveyor systems or any other method of product transport; and buffer areas along bordering properties and public roads.

(e) A plan for staking or marking the borders of the entire nonmetallic mine site or processing facility, and for securing the site by appropriate measures, which may include fencing or alternative measures consistent with mine safety and security, prepared by a registered engineer or a licensed surveyor.

(f) A map on which all residential, agricultural and municipal wells within ½ mile of the boundaries of the nonmetallic mine site or processing facility in all directions are marked and given a numerical identification number for the location, prepared by a registered engineer or a licensed surveyor.

(g) 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, karst features and other water features on the site and within 1/2 mile of the nonmetallic mine site or processing facility, prepared by a registered engineer or a licensed surveyor.

(h) The operator shall place test wells in appropriate numbers and in appropriate locations, as determined by the Town, to verify the groundwater elevations, gradient and depth of the groundwater, and any karst features on the nonmetallic mine site or processing facility. Test wells located in the down-gradient direction of groundwater flow shall be located so that they can serve as permanent sentinel monitoring wells during the course of operations. In addition, the operator shall install sufficient wells, as determined by the Town, to determine the amount of groundwater drawdown estimated to occur from the mining operation.

(i) A description of the distribution, depth and type of topsoil at the mine site, including the area of the site proposed for mining and for which an operator's license or planned mining operation application has been submitted and all

contiguous parcels owned or controlled by the operator and each landowner/lessor of property on which the nonmetallic mining operation will be located. The description shall include the geological composition, depth, and width of the nonmetallic deposit, the location of slopes greater than 20%, and the location of highly erodible soils.

(j) A map identifying the location of all other non-contiguous mine sites, if any, that will contribute extracted material to the same processing facility for which the applicant seeks a license.

(k) A letter from the Wisconsin Department of Natural Resources concerning any threatened or endangered species at the mine site.

(3) Operation Plan. The application shall include an operation plan that includes all of the following elements. Each element must comply with the minimum standards of operation under Section 1.07:

(a) Dates of the planned commencement and cessation of the operation of the mine and processing facilities.

(b) Description of hours of operation of the nonmetallic mine site or processing facility including all times when vehicles will enter or leave the site or facility.

(c) Description of mining methods, machinery and equipment to be used for extraction and processing of the extracted material, and the sequence of operations.

(d) Estimated volume of material to be extracted over the life of the mine and for each calendar year.

(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 nonmetallic mine site or processing facility, an assessment of the adequacy of roads within proposed off-site trucking routes, a description of any proposed alterations or improvements to such roads, and a description of any traffic control or other measures needed to protect public safety. Locations where the operator proposes to cross over or under roads with conveyer systems shall also be identified.

(f) A water budget, including an estimate of the amount of daily water use, water sources, and methods for disposing of water used at or precipitation falling on the nonmetallic mine site or processing facility, and water that flows onto the property from other property, including methods used for infiltration and control of run-off.

(g) A listing of any hazardous materials, including fuel supplies, which will be stored on the nonmetallic mine site or processing facility, and a written plan for securing and storing these materials, for responding to spills of these materials and fuels on the site, and specifying the frequency of training drills for responding to spills on the site.

(h) A listing of all flocculants and other chemicals used in the excavation, manufacturing, or processing operations or in controlling dust, and a detailed description of expected releases and final disposal of each.

(4) Information Demonstrating Compliance with Minimum Standards.

(a) The operator shall provide such additional information that the Town deems necessary to determine whether the mining operation will comply with the minimum standards of operation in Section 1.07, or which the Town deems necessary to evaluate the proposed planned mining operation.

(b) The operator shall provide information establishing baseline conditions at the nonmetallic mine site or processing facility before operations commence, including the groundwater elevation across the site; the groundwater quality at the site, including analysis of lead and other heavy metals, arsenic, turbidity, total suspended solids, chlorides, nitrates, specific conductivity, any chemical or residual of the chemical used as a flocculant, and any other toxic substance 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 waters within 1 mile of the mine site or processing facility.

(c) For mining operations and processing facilities commencing operations after the effective date of this Ordinance, the operator shall also provide information establishing background conditions for air quality at the site, including PM<sub>10</sub>, PM<sub>2.5</sub> and total suspended particulates (TSP) before operations commence, using appropriate EPA methods.

(5) Special Exceptions. The applicant may request a special exception from the application requirements of this section. The Town Board may grant the special exception if the applicant demonstrates that the application requirement can be satisfied by alternative means, or is not necessary to evaluate the particular mining operation, and that the purposes and intent of this Ordinance and the public health, safety and welfare will not be adversely affected thereby.

**Section 1.07. Minimum Standards of Operation**

The Town Board shall grant an operator's license if it finds that the proposed nonmetallic mining operation will be consistent with the following standards and the purposes of this Ordinance:

(1) General Standards.

(a) The borders of the entire nonmetallic mine site or processing facility will be appropriately staked or marked, and the site will be secured by appropriate measures, which may include fencing or other alternative measures consistent with appropriate mine safety and security, as provided in a plan supplied to the Town by the operator that was prepared by a registered engineer or a licensed surveyor.

(b) The nonmetallic mining will comply with all applicable Town Ordinances.

(c) 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. The operator shall demonstrate this by submitting a copy of all permits, approvals, or waivers of permits to the Town prior to commencing operations.

(2) Buffer Areas.

(a) Except as noted below, the operator shall provide a buffer area of a minimum of 250 feet between the nonmetallic mine site or processing facility and bordering property lines and public road right-of-ways, to protect bordering properties and the public from noise, dust, lighting, odors, blasting, and other adverse impacts of the operation. In addition, the operator shall provide a setback of at least 500 feet from any mining activities on the mine site to any dwelling, unless the landowner consents to a lesser distance. Such lesser setback distance may not be less than 250 feet, and the town must be notified of the landowner's consent to a lesser setback. The operator shall also provide a setback of at least one mile from any mining activities on the mine site to any school or medical facility.

(b) The processing area within a mine site, and the processing infrastructure on a processing site, shall be located in the center of the site to maximize distance between processing equipment and the site boundary, to the greatest extent practicable.

(c) The operator shall provide a setback of at least 1,000 feet from a processing facility and from any location where processing operations will occur on a mine site to any dwelling, unless the landowner consents to a lesser distance. Such lesser setback distance may not be less than 250 feet, and the Town must be notified of the landowner's consent to a lesser setback. The operator shall also provide a setback of at least one mile from any processing facility or processing operations on a mine site to any school or medical facility.

(d) If a berm is placed within the buffer area and along a public roadway, the bottom edge of the berm that is closest to the roadway shall be a minimum of 10 feet from the edge of any road right-of-way or road-side ditch, whichever is

further from the travelled roadway, and the berm shall be vegetated to minimize erosion.

(e) The operator shall screen the mining operations from public view to the maximum extent practicable. Screening may be achieved with berms, additional setbacks, or other measures deemed adequate by the Town Board.

(3) Hours of Operation.

(a) The operator shall limit normal hours of operations at the nonmetallic mine site or processing facility to 10 hours a day Monday through Friday not earlier than 7:00 a.m. and not later than 5:00 p.m. and on Saturday not earlier than 7:00 a.m. and not later than noon, to avoid substantial or undue impacts on neighboring properties and town residents. Operations shall not occur on Sundays or named holidays listed under paragraph (b) below.

(b) Operation of heavy vehicles entering or leaving the nonmetallic mine site or processing facility shall be limited to 10 hours a day Monday through Friday not earlier than 7:00 a.m. and not later than 5:00 p.m. and on Saturday not earlier than 7:00 a.m. and not later than noon. There shall be no operation of heavy vehicles leaving the nonmetallic mine site or processing facility on Sunday or the following holidays:

1. New Year's Day (*January 1*)
2. Martin Luther King Jr.'s Birthday (*3rd Monday in January*)
3. Memorial Day (*Last Monday in May*)
4. Independence Day (*July 4*)
5. Labor Day (*1st Monday in September*)
6. Thanksgiving Day (*4th Thursday in November*)
7. Christmas Eve Day (*December 24*)
8. Christmas Day (*December 25*)
9. New Year's Eve Day (*December 31*)

(c) The operator shall schedule operation of heavy vehicles travelling to or from the mining site to avoid interfering with the safety of children being taken to or returned from school; slow-moving farm vehicle traffic; or residents and commuters when traffic volume from commuters going to and from work is highest.

(4) Use of Roads within the Town.

(a) The operator shall identify the routes that it proposes to use for heavy vehicles traveling to or from the mine site or processing site; and shall use only the routes

approved by the Town, subject to the financial assurance requirements under Section 1.10.

(5) Control of Light and Noise.

(a) The operator shall limit night lighting, on the nonmetallic mine site or processing facility, to what is minimally necessary for security and worker safety. Every effort, consistent with legal requirements for safety, shall be made to minimize illumination of the night sky and neighboring properties. At a minimum, such measures shall include the following:

1. The use of full cutoff shrouds on all lights.
2. The use of portable lighting only as necessary to illuminate temporary work areas.
3. The use of berms of sufficient height, coupled with other methods of visual screening, to block light from the mine or processing facility to neighboring properties.
4. The design and location of access roads to minimize the casting of lights from traffic and operations to neighboring properties.

(b) The operator shall control off-site noise levels to the maximum extent practicable to avoid adverse impacts on neighboring properties. The noise levels at the boundaries of the mine site or processing site shall not exceed 60 dbA. The noise levels at the boundaries of any school or medical facility shall not exceed 55 dbA. Decibels shall be based on dbA, which is the unit of sound level expressed in decibels (db) and A-weighted as described in ANSI § 1.4, 1983 and shall be measured in accordance with accepted protocols.

(c) Noise levels shall be monitored at the nonmetallic mine site or processing facility property boundary by an independent testing company. The tests shall occur continuously for a 10-day period at least quarterly. The results shall be reported to the Town within 30 days of each test result.

(d) The use of compression release engine brakes, commonly known as jake-brakes, is prohibited except for emergencies.

(e) The operator may not use reverse alarms on equipment except white noise alarms.

(f) The operator is prohibited from using truck box vibrators and may not allow end gates to be slammed on truck boxes.

(6) Control of Air Pollution.

(a) State Requirements. The operator shall follow all state and federal dust control and air quality requirements, including all relevant dust control measures specified in Wis. Admin. Code § NR 415.075 and in any approved Fugitive Dust Control Plan.

(b) High Wind Events. The operator shall have an established protocol, approved by the Town Board, for additional dust control measures when the National Weather Service has issued a High Wind Warning for the area or the wind speed is detected in the area by an approved monitor at the same level as a National Weather Service Wind Advisory. (A Wind Advisory is for winds greater than or equal to 30 mph lasting for one hour or longer, or winds greater than or equal to 45 mph for any duration.) The established protocol shall include the specific location of the anemometers that the operator will use to determine wind speed, a daily procedure to monitor wind speed, and appropriate measures to be taken during high wind events.

(c) Air monitors.

1. The operator shall install air monitors at all nonmetallic mining operations, including the mine site and any processing facility, in accordance with the installation of ambient air monitors required by DNR.
2. In addition to ambient monitoring required by the DNR, the operator shall monitor the ambient level of Total Suspended Particulates (TSP) as measured by the method described in Appendix B of 40 C.F.R. pt. 50 (2018) or a method approved in writing by the Town. The operator may monitor for PM<sub>10</sub> as a surrogate for monitoring for TSP if approved in writing by the Town. If PM<sub>10</sub> is used as a surrogate, it shall be measured by the method described in Appendix J of 40 C.F.R. pt. 50 (2018).
3. The type and number of TSP monitors needed, the location of the monitors, and the frequency and duration of the monitoring program shall be determined by agreement of the operator and the Town, but all costs associated with monitoring shall be borne by the operator. The monitoring shall be conducted for the life of the mine. Monitoring frequency may be revised if no active mining occurs for 6 months or more.
4. The operator shall submit all monitoring results to the Town Clerk on a monthly basis. Results for each month shall be postmarked or received by the Town Clerk no later than the last day of the following month. The Town Board shall provide public access to all results. The Town Board may require additional or updated monitoring as part of licensing renewal if there have been complaints about dust and particulates from the mine site.



5. If the air monitors show an exceedance of 150 micrograms per cubic meter of TSP in any 24 hour period, the operator shall evaluate and implement additional best management practices to minimize TSP. If there are repeated exceedances of these standards notwithstanding the implementation of best management practices, the Town may suspend or revoke the license.

6. If no ambient air monitoring plan is required by the DNR, the operator shall submit an ambient air monitoring plan to the Town Clerk 60 days before beginning operations at the mine. The Town shall approve, modify or deny the plan within 60 days of the operator's submission of the plan. If subject to this subsection, the operator may not begin operations without an approved ambient air monitoring plan.

(d) Other Requirements. In order to control the emission of dust, the operator shall fully enclose all product stockpiles at processing facilities and at locations on a mine site where processing will occur, including stockpiles of unprocessed material, waste material, and partially- or fully-finished product. The operator shall completely enclose any dry processing facilities and shall enclose to the extent practicable any loading or unloading facilities. The operator shall cover all trucks hauling nonmetallic minerals with secured tarps or other covers that fully cover the hauled materials. The operator shall also ensure that all trucks have effective mud flaps installed behind the rear wheels of the trucks.

(7) Control of Waste Materials. The amount of waste material returned to a mine site as part of the reclamation process shall not exceed the site-specific ratio of waste to target material of the extracted raw material as determined prior to the processing of the raw material. A processing facility shall keep records of the volume of raw material drawn from each raw material source. The volume of waste byproduct that is returned to each mine site for reclamation shall not exceed the volume of waste contained in the raw material received at the processing facility from that site.

(8) Standards Regarding Groundwater and Surface Water. The requirements in this subsection apply to any nonmetallic mining site and any processing facility involving a wash plant or other water intensive process.

(a) Impacts to Groundwater Quality.

1. The nonmetallic mine site or processing facility shall have at least one sentinel well, and may be required to have additional wells at Town Board discretion, at the boundary of the nonmetallic mine site or processing facility, that is down gradient of the groundwater flow direction on the site. The operator shall take samples from the sentinel well for lead and other heavy metals, arsenic, turbidity, total suspended solids, chlorides, nitrates, specific conductivity, any chemical or residual of the chemical used as a flocculent, and any other toxic substance that may reasonably be

believed to be present in the area or in the type of deposit from which the extraction will be made. These samples shall be taken monthly during the first three years of operation, and quarterly in subsequent years.

2. The mining company shall sample private wells within 1 mile of the nonmetallic mine site or processing facility down gradient of the groundwater flow quarterly and private wells on parcels that are adjacent to the perimeter of other sides of the mine site or processing facility twice per year. Monitoring shall continue for three years after the closure of the mine or processing facility.

3. Changes in the level of the groundwater table shall be monitored at the sentinel well(s).

4. Prior to the onset of nonmetallic mining operations, the operator shall sample all private wells within 1 mile of the property on which the nonmetallic mine site or processing facility is located. The wells shall be sampled for lead and other heavy metals, arsenic, turbidity, total suspended solids, chlorides, nitrates, specific conductivity, and any other toxic substance that may reasonably be believed to be present in the area or in the type of deposit from which the extraction will be made. The wells shall also be sampled for water quantity and groundwater depth. Sampling results shall be provided to the Town and the owner of the well sampled.

5. Nonmetallic mining operations shall not cause an exceedance of groundwater quality standards in Wis. Admin. Code ch. NR 140.

6. All samples conducted shall be collected by an independent, licensed consultant and analyzed by an accredited, independent laboratory.

7. All wash plant settling ponds shall be lined with at least 5 feet of clay meeting the technical standards contained in Wis. Admin Code § NR 504.06 (2) for clay liners.

(b) Impacts to Groundwater Quantity.

1. At least 60 days prior to commencement of nonmetallic mining operations, the operator shall install sufficient test wells to verify the groundwater elevations on the nonmetallic mine site or processing facility. Test wells in the down-gradient direction of groundwater flow shall be located so as to also serve as permanent sentinel monitoring wells during the course of operations.

2. Mining operations shall not extract materials at a depth below the point that is 5 feet above the maximum annual groundwater table depth.

3. Mining operations shall not cause a significant reduction in the quantity of groundwater available for reasonable use by other users. A significant reduction includes a drop in the water table that results in a substantial adverse impact on a well including, but not limited to, the inability of a well to provide a sufficient volume of water on a continuous basis.

(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, including but not limited to, a reduction of water in streams and tributaries to or below base flows established by the operator 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 that provide water for agricultural, recreational, or municipal functions, such as fire protection. 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 operations.

(e) The operator shall take all measures necessary to control surface water runoff from nonmetallic mining operations in order to prevent pollution and erosion of sediment onto neighboring properties or into surface water and groundwater. The operator shall also comply with the standards for erosion control under Wis. Admin. Code ch. NR 216 and NR 151, as applicable.

(f) In the event that the mine site or processing facility contains areas adjacent to the nonmetallic mining operations that are being used for agricultural, commercial, or residential purposes, the operator shall take all measures necessary to prevent surface water runoff from those areas from entering mining operations or otherwise causing contamination of surface water and groundwater.

(9) 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 use as landfill material or dispose of onsite, any waste material that contains a hazardous chemical or a toxic residual.

(c) The operator shall have a plan for responding to spills of any hazardous materials on the nonmetallic mine site or processing facility.

(10) Additional Standards.

The Town Board may, at any time, impose additional requirements if it determines that the public health, safety, or welfare is not being or will not be adequately protected without additional measures.

**Section 1.08. Reporting, Annual Report**

(1) On-going Reporting Requirements.

(a) The operator shall provide notice to the Town of any notices of violations, citations, or other enforcement actions taken by any other governmental authority against the mining operation, and of any private lawsuit or challenge of any approval. The operator shall provide notice to the Town of such actions within \_\_\_ days after receiving such notice from the governmental authority. The operator shall also provide the Town with copies of any subsequent communications related to the notice or action, between the operator and the entity that provided the notice or took the action

(b) All monitoring data, sampling results, and any other test results required by this Ordinance shall be collected and undertaken at the operator's expense and provided to the Town Clerk. Unless otherwise specified in this Ordinance, all monitoring data, sampling results, and any other test results shall be provided to the Town Clerk within 30 days of receipt of the results by the operator.

(2) Annual Report.

(a) No later than October 1 of each calendar year, the operator shall submit an annual report to the Town Board for all active and intermittent mining sites and processing facilities for which the operator has a license in the Town. The reporting period shall be from the date of the issuance of the first operator's license to August 31, and thereafter from September 1 to August 31.

(b) The annual report shall include the following information:

1. An identification of the operator and location of the nonmetallic mine site or processing facility.
2. A map or drawing accurately showing the area of excavation, the unreclaimed area and the reclaimed area including a calculation of the number of acres for each type.
3. A description of activities (including sand extraction and waste material production) and operations on the nonmetallic mine site or processing facility for the previous calendar year, including the cubic yards each of material extracted, sand processed, and waste material produced.

4. A description of activities and operations on the nonmetallic mine site or processing facility (including sand extraction and waste material production) anticipated for the following calendar year, including the cubic yards each of material to be extracted, sand to be processed, and waste material to be produced.

5. A written report demonstrating how the operator has complied with all terms and conditions of its license and this Ordinance. The report shall include all groundwater, surface water, and other monitoring results, as well as a copy of all annual reports submitted to all other agencies.

6. A summary of all areas of non-compliance, and a plan for bringing non-compliant areas into compliance.

**Section 1.09. Inspection, Enforcement, Procedures and Penalties**

(1) Inspection. The Town Board, a retained expert, or another authorized representative of the Town, may make inspections or undertake other investigations to determine the condition of a nonmetallic mine site or processing facility in the Town to safeguard the health and safety of the public and to determine compliance with this Ordinance, upon showing proper identification and providing reasonable notice.

(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 applicable minimum standards and other terms of this Ordinance.

(c) Making an incorrect or false statement, including in the information and documentation submitted during the licensing process or during an inspection by the Town or its duly appointed representative, or a representative of another regulatory agency.

(d) Failure to timely file the annual report required under Section 1.08.

(e) Failure to comply with any conditions of an approval or license, or any agreements entered into as a condition of approving a license.

(f) Failure to provide or maintain any required financial assurance.

(g) 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.

(3) Hearings.

(a) Any person affected by a notice, order, or action under sub. (4), or upon denial of an application for a license or license renewal, may request a hearing on the matter before the Town Board, provided such person files with the Town Clerk a written petition requesting the hearing and setting forth his or her name, address, telephone number, and a brief statement of the reason for requesting the hearing. Such petition shall be filed within 30 days of the date the notice, order, or action under sub. (4) is served or within 30 days of the date of the approval or denial of a license or an application for a renewal. Upon receipt of the petition, the Town Clerk may set a time and place for a hearing before the Town Board and, if a hearing is scheduled, shall give the petitioner and other interested parties written notice thereof.

(b) After a hearing under par. (a), the Town Board, by a majority vote of the members present, shall sustain, modify or withdraw the notice, order, or action 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. The petitioner shall be notified within 10 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.

(c) Issue a citation.

(d) Refer the matter to legal counsel for consideration and commencement of legal action, including the assessment of forfeitures under sub. (6) and injunctive relief.

(e) Suspend or revoke the operator's license under sub. (5) in the event there are repeated exceedances of the standards or conditions incorporated into an operator's license or planned mining operation Agreement.

(5) License Suspension or Revocation. After giving notice and holding a hearing, the Town Board may suspend or revoke an operator's license for a violation under sub. (2).

(6) Penalties.

(a) Any person or entity who violates this Ordinance may be assessed a forfeiture of not less than \$500 per violation nor more than \$5,000 per violation and/or be subject to injunctive relief. Each day a violation exists is a separate violation.

(b) Any person or entity who violates this Ordinance shall pay court costs and reasonable attorney's fees associated with a forfeiture assessed under sub. (6) (a) and for any action for injunctive relief sought by the Town. The remedies provided herein shall not be exclusive of other remedies.

(7) Non-Waiver. 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 or future violation(s).

**Section 1.10. Financial Assurance, Insurance**

(1) Financial assurance shall be provided to the Town, in a form acceptable to the Town Board which may include escrow accounts, irrevocable letters of credit or other measures agreed upon by the Town Board, as a condition of license approval in the amount necessary for the following:

(a) Road Repair. The operator shall provide to the Town Board for review and approval a proposal for financial assurance to address any potential damage to Town roads resulting from the use of Town roads by any heavy vehicles owned by the operator or operated under contract, lease, or license by the operator and work to be conducted under any privileges in the right-of-way of a Town road to cross over or under a Town road with a conveyor system or any other method of product transport. Such financial assurance can include but is not limited to the following:

1. An agreement to rebuild the Town roads used as truck routes or crossing sites within 6 months of the commencement of mining operations to standards appropriate to the weight of the vehicles used by the operator, subject to prior review and approval of the Town Board, and subject to providing funds for maintenance and future replacement of the road.
2. An escrow deposit in an amount sufficient to rebuild and maintain the Town roads used as truck routes and to address issues that arise at road crossing locations.
3. Other financial assurance measures as determined by the Town Board.

The Town may adjust the amount of financial assurance on an annual basis, at the Town's sole discretion, to ensure that the amount is adequate to rebuild and

maintain the Town roads and to conduct the other activities for which financial assurance is required.

If the Town roads are being used by more than one operator, the operators may propose and the Town Board shall consider a joint agreement to satisfy the financial assurance obligations in this section.

(b) Water Supply. The operator shall provide to the Town Board for review and approval a proposal for financial assurance sufficient to provide an alternative water supply under Section 1.11 to potentially affected residential, agricultural, or other private or public wells within one mile of the mine site or processing facility or such other area shown to be impacted by the operator's operations. The Town may adjust the amount of financial assurance on an annual basis, at the Town's sole discretion, to ensure that the amount is adequate to provide an alternative water supply under this paragraph.

(2) The operator shall provide to the Town proof that it has provided the financial assurance for reclamation required under Wisconsin law.

(3) The operator shall provide proof to the Town that the operations are insured by commercial general liability insurance in an amount not less than \$5,000,000 per occurrence. The insurance policy or policies shall list the Town as a named insured and shall obligate the insurer to notify the Town if there is a lapse in insurance coverage. The operator shall maintain continuous insurance coverage during the entire period of operations.

### **Section 1.11. Damages to Private Water Supplies**

(1) A property owner within one mile of a mine site or processing facility may seek remedies under subs. (2)-(5) for any of the following damages to a water supply:

(a) A maximum contaminant level, preventative action limit or enforcement standard is exceeded in a well on the owner's property.

(b) A substantial adverse impact on the quantity of water from a 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 file a notice with the Town and the operator that explains the nature and extent of the problem under sub. (1).



(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 may also use funds under Section 1.10 to indemnify the Town with respect to any claims filed under state law, including under Wis. Stat. § 281.77(4). An interim water supply shall continue to be provided to the property owner until the Town has approved the report or plan under sub. (4).

(4) Within 20 days of receipt of notice under sub. (2), the operator shall provide to the property owner and to the Town a report that either demonstrates that the damage to the well under sub. (1) was not attributable to the mining operation or processing facility, or that presents a plan for providing a permanent alternative water supply well for the property, to be paid for by the operator.

(5) The Town shall, in consultation with the property owner, review the report or plan and approve or deny the report or plan. If the Town determines that the 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 year; the Town shall not be held responsible for recouping any costs from the property owner for the operator.

(6) A property owner with property further than one mile from a mine site or processing facility may apply to the Town for use of the funds provided by the operator 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 operator's operations. If the Town determines that the damage was caused by the mine or processing facility, the property owner may utilize the remedies in subs. (2) to (5).

### **Section 1.12. Planned Mining Operation Approval**

(1) Purpose. The purpose of this section is to provide a voluntary procedure for an operator to request approval of nonmetallic mining using legislatively developed regulations and standards that are unique to a particular proposed nonmetallic mining or processing operation.

(2) Authorization. This section provides an alternative to the otherwise applicable regulations set forth in this Ordinance. In exchange for greater flexibility in developing regulations and standards unique to a proposed mining operation, a planned mining operation approval may require additional or different standards, requirements, levels of review, monitoring and compliance mechanisms, and measures to mitigate or compensate for impacts, as determined in the sole discretion of the Town Board.

(3) Application for a Planned Mining Operation.

(a) The application requirements, approval requirements and procedures in Section 1.05 apply to an application for approval of a planned mining operation,

except that the standard for granting or denying the application is set forth in sub. (4).

(b) The application shall include all of the information and other materials required in Section 1.06.

(c) The application shall describe all the ways in which the proposed planned mining operation will deviate from the otherwise applicable regulations in this Ordinance, including but not limited to the term of the approval, the process for inspection and review of operations, and the minimum standards of operation.

(d) The application shall provide a written justification for any proposed deviations from the otherwise applicable regulations in this Ordinance, which may include provisions to minimize, mitigate, or compensate for potential impacts to public health, safety and welfare including impacts to property values.

(4) Decision by the Town Board.

(a) The Town Board may review the application, any retained experts' reports, public comments made and information provided at the public hearing, and any other information the Town Board deems appropriate. The Town Board may, in its sole discretion, approve the planned mining operation in the exercise of its police powers.

(b) If the planned mining operation is approved, all standards and regulations in this Ordinance that are not expressly modified in such approval shall apply to the planned mining operation.

(c) The Town Board may condition its approval on the operator entering into such agreements, and providing such financial assurance, as the Town Board deems appropriate to promote the public health, safety and general welfare.

**1.13 Severability, Interpretation, and Abrogation**

(1) Severability.

(a) Should any section, clause, provision, standard, or portion of this Ordinance be adjudged unconstitutional or invalid, unlawful, or unenforceable by a final order of a court of competent jurisdiction, 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 of a court of competent jurisdiction, such judgment shall not be applicable to any other parcel of land not specifically included in said judgment, unless specifically required by the court.

(2) The provisions of this Ordinance shall be liberally construed in favor of the Town and shall not be construed to limit or repeal any other power now possessed by or granted to the Town.

(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 1.14 Effective Date**

(1) Following passage by the Town Board, this Ordinance shall take effect the day after the date of publication or posting as provided by Wis. Stat. § 60.80.

ADOPTED \_\_\_\_\_, 20\_\_.

TOWN OF ROCK

\_\_\_\_\_  
\_\_\_\_\_, Town Board Chairperson

\_\_\_\_\_  
\_\_\_\_\_, Supervisor

\_\_\_\_\_  
\_\_\_\_\_, Supervisor

\_\_\_\_\_  
\_\_\_\_\_, Supervisor

\_\_\_\_\_  
\_\_\_\_\_, Supervisor

Attested to as of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
\_\_\_\_\_, **Town Clerk**