

TOWN OF GARDNER
Door County, Wisconsin

ORDINANCE No. 02-2021
NONMETALLIC MINING ORDINANCE

The Town Board of Supervisors of the Town of Gardner ("Town Board"), Door County, Wisconsin, does ordain as follows:

Section 1.01 - Preamble

The purpose of this subchapter is to promote the health, safety, prosperity, aesthetics, and general welfare of the people and communities within the Town of Gardner ("Town"), Door County, Wisconsin, and set forth the rules and procedures regarding nonmetallic mines within the Town. This ordinance is adopted pursuant to the Town's village and police powers under Wis. Stat. §§ 60.10(2)(c) and 61.34.

Section 1.02 - Intent

The general intent of this subchapter is to regulate the location, construction, installation, alteration, design, operation and use of all nonmetallic mines so as to protect the health of residents and transients; secure safety from disease and pestilence; further the appropriate use and conservation of land and water resources; preserve and promote the administration and enforcement of this subchapter and provide penalties for its violations.

Section 1.03 - Interpretation

In their interpretation and application, the provisions of this subchapter shall be held to be minimum requirements and shall be liberally construed in favor of the Town and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.

Section 1.04 - Definitions

- (1) Metallic mining or mining means operations or activities for the commercial extraction from the earth of merchantable metallic minerals or the exploration or prospecting for such minerals and includes operations, processes or activities related to that extraction.
- (2) Nonmetallic mining and mining mean all of the following:
 - a. Operations or activities at a nonmetallic mining site for the extraction from the earth of mineral aggregates or nonmetallic minerals for sale or use by the operator. Nonmetallic mining includes use of mining equipment or techniques to remove materials from the in-place nonmetallic mineral deposit, including drilling and blasting, as well as associated activities such as excavation, grading and dredging. Nonmetallic mining does not include 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.

- b. Processes carried out at a nonmetallic mining site that is related to the preparation or processing of the mineral aggregates or nonmetallic minerals obtained from the nonmetallic mining site. These processes include, but are not limited to, stockpiling of materials, blending mineral aggregates or nonmetallic minerals with other mineral aggregates or nonmetallic minerals, blasting, grading, crushing, screening, scalping and dewatering.
- (3) Production Activities means operational activities that include but are not limited to; drilling, blasting, excavation, loading and transporting broken ore.

Section 1.05 - Nonmetallic Mining

- (1) Nonmetallic mining in the Town shall be allowed only as provided for in this ordinance.
- (2) The applicant shall apply for a Town permit for a nonmetallic mine prior to starting work on any mining structure or facility and prior to commencing any Production Activities on any nonmetallic mine in the Town. The application shall be submitted on a form provided to the applicant by the Town Clerk, a copy of which is attached hereto as Appendix A.
- (3) The Town Board shall be the sole determining body of whether to issue the permit, after review and recommendation by the Town Plan Commission, and after a public hearing has been held by the Town Board, with notice given by U.S. Mail to all landowners within one (1) mile of the proposed nonmetallic mining site. The Town Board shall grant the permit, either with or without conditions, if it is determined that the development and operation of the nonmetallic mine is in the best interests of the citizens of the Town, and will be consistent with the protection of public health, safety and general welfare.

Section 1.06 – Procedures

- (1) The applicant shall complete a Town of Gardner Nonmetallic Mining Permit Application (Appendix A) and pay the required application fee of \$500.00 to the Town, at the time the application is submitted to the Town Clerk. In addition to the required application fee, within thirty (30) days following submission of the application to the Town Clerk, but before the application is reviewed or otherwise considered by the Town, the applicant shall be required to enter into an agreement with the Town under which the applicant shall agree to compensate the Town for all legal services and expert consulting expenses which may be reasonably incurred by the Town as part of its review and processing of the application, regardless of whether or not the application for a permit to mine is subsequently approved by the Town. A Nonmetallic Mining Permit shall not be issued by the Town unless all legal services and expert consulting expenses have been paid in full by the applicant.

- (2) After receiving the application and the application fee, the Town Clerk shall mail a copy of the application to all landowners within one (1) mile of the proposed nonmetallic mining site with the date and time of the next Town Plan Commission meeting.
- (3) The Clerk shall then place the application on the agenda for the next Town Plan Commission meeting.
- (4) The Plan Commission shall review and consider the application and make a recommendation to the Town Board. After a decision has been rendered by the Plan Commission, the application shall be placed on the agenda of the Town Board for a public hearing and decision.
- (5) At the public hearing held by the Town Board, the Town Board shall consider the recommendation of the Plan Commission and take public comment on the proposed mine. Before making a decision on the application, the Town Board shall determine whether the application is complete and whether the applicant has applied for or received any required Federal, State, and County permits for the proposed nonmetallic mining site.
- (6) The Town Board shall grant the permit, either with or without conditions, if it determines that the development and operation of the nonmetallic mine is in the best interests of the citizens of the Town, and will be consistent with the protection of public health, safety and general welfare. The Town Board shall deny the permit if it determines that the development and operation of the proposed nonmetallic mine is not in the best interests of the citizens of the Town, and will not be consistent with the protection of public health, safety and general welfare. In making its decision, the Town Board shall consider the location of the proposed nonmetallic mine, the applicant's proposed mining and related operations, the expected impacts of the proposed mining and mining operations on Town roads and road safety, the applicant's experience and track record in operating other nonmetallic mines and related operations, and any other factors relating to the best interest of the citizens of the Town and the protection of public health, safety, and general welfare.
- (7) The Town Board may conditionally approve the permit and may attach conditions to protect public health and safety and promote the general welfare of the Town. Such conditions may include, but are not limited to, restrictive provisions and proof of financial security for operation, which may include bonds in the amount reasonably determined by the Town Board, restrictive provisions and proof of financial security for town road maintenance and repair, which may include bonds in the amount reasonably determined by the Town Board, restrictions on hours of operation, restrictions on truck and traffic volume into and out of the mine site, restrictions to protect groundwater quantity and quality, restrictions to safeguard public and private drinking and agricultural wells, restrictions to control air emissions and dust from the mine and its operations, restrictions to control the discharge of water, including storm water discharge, installation of fencing and/or landscape barrier surrounding the proposed mining site, radon gas monitoring equipment installation, location and storage of non-operating equipment, and any other restrictions deemed necessary or appropriate by the Town Board to protect public health and safety and promote the general welfare of the Town and its citizens.

Section 1.07 - Transfer of License

A current holder of a Nonmetallic Mining Permit may only Transfer said permit pursuant to Section 1.07. A Transfer is defined as a change in ownership to a new person, entity, trust, etc., including but not limited to a change in the controlling ownership of a corporation or limited liability company. A current holder of a Nonmetallic Mining Permit may Transfer said permit by submitting a written request for transfer to the Town Board. If a current holder of a Nonmetallic Mining Permit requests a transfer of said permit, the Town shall release the current holder of the responsibilities imposed by the Nonmetallic Mining Permit only if the following conditions are met, pursuant to the Town's reasonable discretion:

- (1) Both the current holder and the proposed transferee are in compliance with the requirements of this Ordinance and all other applicable State, Federal and local, laws, requirements, regulations, permits, and licenses.
- (2) The proposed transferee assumes the responsibility of the current holder in writing and agrees to operate the mining site in accordance with the Nonmetallic Mining Permit, the historical production amounts of the mining site, and all other applicable laws, requirements, regulations, permits, and approvals.
- (3) The proposed transferee shows proof of financial responsibility in substantially the same manner and amount as the current holder and the Transferee agrees to maintain any instrument of financial assurance, including but not limited to bonding, at the same level as the current holder.
- (4) The Town Board makes a written finding that all conditions of the existing Nonmetallic Mining Permit will be complied with by the proposed transferee.

If the Town Board denies a Transfer pursuant to this Section, the proposed transferee may apply for a Nonmetallic Mining Permit pursuant to Section 1.06.

Section 1.08 – Violations

In addition to failure to comply with any provision of this Ordinance, the following are specific violations under this Ordinance:

- (1) Failure to comply with the applicable minimum standards and other terms of this Ordinance, all other Town ordinances and codes, and all other governmental or other regulatory authority requirements, laws, regulations, and requirements, or failure to comply with any applicable permits, licenses and approvals required for the nonmetallic mining site.
- (2) Making an incorrect or false statement in the information and documentation submitted during the Nonmetallic Mining Permit Application process.

- (3) Failure to comply with any conditions of approving the Nonmetallic Mining Permit Application, or any agreements entered into as a condition of approving the Nonmetallic Mining Permit Application.
- (4) Failure to provide or maintain any financial assurance required, including bonds, as a condition of approving the Nonmetallic Mining Permit Application.
- (5) Failure to take appropriate action in response to a notice of violation, citation, request for additional financial assurance or other order issued by the Town.

Section 1.09 - Notice of Violation.

The Town Board or its designee may issue a notice of violation and order for curing the violation upon a violation of any term of this Ordinance or any other defined violation in Section 1.08 pursuant to the following provisions.

- (1) The Town shall serve a notice of violation upon the Nonmetallic Mining Permit holder within thirty (30) days of the Town obtaining knowledge of the violation. The notice of violation may include a proposed work plan or other remediating steps to cure the violation.
- (2) The Nonmetallic Mining Permit holder shall have thirty (30) days from the Nonmetallic Mining Permit holder's receipt of the notice of violation and order to complete all necessary work to cure the violations to the Town's satisfaction.
- (3) Any person affected by a notice and order issued in connection with the enforcement of this Ordinance under this Section may request and shall be granted a hearing on the notice of violation and order before the Town Board, provided such person shall file with the Town Clerk a written petition requesting the hearing and setting forth the person's name, address, telephone number and a brief statement of the grounds for the hearing, the requested relief, or for the mitigation of the order. Such petition shall be filed within thirty (30) days of the date the notice and order are served upon the Nonmetallic Mining Permit holder. Upon receipt of the petition for hearing, the Town Clerk shall set a time and place for a hearing before the Town Board and shall give the petitioner written notice thereof. In the event the petitioner is not the Nonmetallic Mining Permit holder, the Town shall provide notice of the hearing to the Nonmetallic Mining Permit holder.
- (4) After the hearing, the Town Board by a majority vote, shall sustain, modify or withdraw the notice under Section 1.09, or modify the order, depending on the Town Board's findings, as to whether the provisions of this Ordinance have been complied with. The petitioner shall be notified within ten (10) days of the Town Board's issuance of its findings and any modification of the order. In the event the petitioner is not the Nonmetallic Mining Permit holder, the Town shall provide a copy of the Town Board's findings of fact and any modification of the Town's order to the Nonmetallic Mining Permit holder.

- (5) The proceedings of the hearing, including the findings and decision of the Town Board and the reasons therefore, shall be summarized in writing and entered as a matter of public record in the office of the Town Clerk. Such record shall also include a copy of every notice and order issued in connection with the case.

Section 1.10 - Remedies for Violations

The Town Board may take any appropriate action or proceeding against any person in violation of this Ordinance or in violation of the terms of the Nonmetallic Mining Permit, including, but not limited to, the following:

- (1) Issue a stop work order for all mining operations. The Town Clerk shall provide the Nonmetallic Mining Permit holder a stop work order within ten (10) days of the Town sending a notice of violation under Section 1.09.
- (2) Issue a notice of violation and order that specifies the action to be taken to remedy a violation under Section 1.09.
- (3) Refer the matter to legal counsel for consideration and commencement of legal action, including, but not limited to, the assessment of forfeitures under Section 1.15 and injunctive relief.
- (4) Suspend or terminate the Nonmetallic Mining Permit under Section 1.11.

Section 1.11 - Mining License Suspension or Revocation

- (1) After service of any notice of violation on an Operator and after any requested hearing has been held on such notice pursuant to Section 1.09, the Town Board may consider suspension or revocation of a Nonmetallic Mining Permit for any violation of this Ordinance or the terms of the Nonmetallic Mining Permit.
- (2) The Town Board shall provide the Nonmetallic Mining Permit holder with a hearing on any proposed Nonmetallic Mining Permit suspension or revocation. The Town Clerk shall provide the Nonmetallic Mining Permit holder with notice of the hearing at least fifteen (15) days in advance. Following the hearing, if the Town Board determines there is reasonable cause to conclude that the Nonmetallic Mining Permit holder has failed to correct or cure a violation it may suspend or revoke the permit.
- (3) Revocation of any Nonmetallic Mining Permit awarded pursuant to this Ordinance shall terminate the Nonmetallic Mining Permit holder's right and authority to continue mining operations pursuant to this Ordinance, but shall not affect the Nonmetallic Mining Permit holder's obligation to comply with any continuing obligations of the holder under the terms of the Nonmetallic Mining Permit or any agreement to which the Town is a party.
- (4) In the event of any violation that is not corrected pursuant to any conditions of correction established by the Town Board and to the satisfaction of the Town Board the Town Board

shall, at one or more open meetings, establish and levy an appropriate forfeiture and order an appropriate compliance schedule consistent with the intent of this Ordinance.

Section 1.12 - Effective Date

This ordinance shall take effect upon passage and on the day after publication.

Section 1.13 - Exceptions from Ordinance

A nonmetallic mining permit is not required from the Town only for nonmetallic mines currently engaged in Production Activities prior to the effective date of this ordinance or for the activities listed in Wis. Admin Code NR § 135.02(3), and as amended. However, if a pre-existing nonmetallic mining operation engaged in Production Activities is expanded after the effective date of this ordinance, the expansion shall be subject to the permitting requirements of this ordinance.


Section 1.14 - Severability

If any section, sentence, clause or phrase of this ordinance, or if any section, sentence, clause or phrase of any permit issued by the Town pursuant to this ordinance, is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance, or of any other section, sentence, clause or phrase of any permit issued by the Town pursuant to this ordinance.

Section 1.15 - Enforcement and Penalties

Any violation of this ordinance shall be punishable by a forfeiture of not less than \$100.00 or more than \$2,000.00 per day for every day in violation of this ordinance, plus the costs of prosecution for each and every violation, including actual attorney's fees. The Town's attorney shall expeditiously prosecute all such violators. Each day of violation shall constitute a separate offense. In addition, compliance with this ordinance may also be enforced by injunction order at the suit of the Town or the owner or owners of real estate affected by the mining operation.

Submitted by:



Roll Call Board Members	Aye	Nay	Exc.
Glen Merkle	X		
Carl Waterstreet	X		
Kevin Fleischman			
Glenn Dart	X		
Mark Stevenson	X		

Certification

I, Amy Sacotte, Clerk of Town of Gardner,
hereby certify that the above is a true and correct
copy of a ordinance that was adopted on the
10 day of March, 2021, by the
Town Board of Supervisors.



Amy Sacotte, Town Clerk
Town of Gardner