

2023-03 NONMETALLIC MINING PERMIT ORDINANCE

The Town Board for the Town of New Hope ordains as follows:

Section One: Title/Purpose.

This Ordinance is entitled "Nonmetallic Mining Permit Ordinance." The purpose of this Ordinance is to establish a local permit program to regulate nonmetallic mining and nonmetallic mining sites on which nonmetallic mining takes place in the Town of New Hope after the effective date of this ordinance. The local permit program is to provide for orderly, economic and safe removal of nonmetallic minerals and to promote the public health, safety and general welfare of the residents of the Town of New Hope.

Section Two: Authority.

This Ordinance is adopted under the authority granted by Section 295.14(1) of the Wisconsin State Statutes for towns, Section NR 135.32, Wisconsin Administrative Code and Section 60.22, Wisconsin Statutes.

Section Three: Adoption of Ordinance.

The Town Board of the Town of New Hope has, by adoption of this Ordinance, confirmed the authority, powers, and duties noted in this Ordinance, and has established by this Ordinance the means to regulate and control nonmetallic mining within the Town of New Hope and to accomplish the purpose set forth above.

Section Four: Coverage.

Every person, pursuant to applicable state statutes and this ordinance, doing business in the town of New Hope who engages in a nonmetallic mining operation at a nonmetallic mining site in the Town of New Hope shall seek and obtain a nonmetallic mining permit from the Town of New Hope. The fee for such permit shall be established by the Town Board of the Town of New Hope at two hundred dollars (\$200.00) per permit. The fee shall be established annually by the Town Board of the Town of New Hope prior to January of each year. The permit shall be issued from January 1 of one year to December 31 of the same year. The Town Clerk of the Town of New Hope shall issue the permit after Town Board approval prior to the person conducting and maintaining a nonmetallic mining operation at a nonmetallic mining site in the Town of New Hope.

Section Five: Application/Permit.

The application and permit shall designate the premises to be used by the permitted person for the nonmetallic mining operation. The permit may not be amended if the person changes the mining site for which the permit was issued in the Town of New Hope. The application for permit shall contain:

- a. The name of the applicant.
- b. The address of applicant.
- c. The business and residential telephone number of applicant, if any.
- d. The required fee as set forth in this ordinance.
- e. The Operational Plan for the Nonmetallic Mining Site which shall include, but not be limited to the following information:
 1. An accurate legal description of the property where the nonmetallic mining will occur. The number of acres in the proposed operation and site layout.
 2. A narrative outlining the type of material to be excavated, mode of operation, estimate of amount of material to be removed, number and frequency of trucks hauling per day, and other pertinent information to explain the request in detail.
 3. A map showing access and haul routes to be used.
 4. A copy of any environmental permits issued by other government agencies for the nonmetallic operation for this site.
 5. A plan for sanitary facilities, at a minimum a portable toilet.
 6. A copy of the reclamation plan as set forth by Portage County under Section 7.8.10 Standards Portage County Code of Ordinances, Nonmetallic Mining Reclamation Ordinance.
 7. A copy of liability insurance for the operation.
 8. Describe the use of explosives in the operation.
 9. Describe the security and physical structures of containment for the site.

Section Six: Exemptions.

Persons will be exempt from this permit requirement if they conduct in the Town of New Hope the following activities:

- a. Excavations or grading by a person solely for domestic use at his or her residence that encompasses one acre or less in size.
- b. Grading conducted for farming, preparing a construction site or restoring land following a flood or natural disaster.
- c. Excavations for building construction purposes.
- d. Any activities conducted at a solid or hazardous waste disposal facility site required to prepare, operate, or close a solid waste disposal facility, under applicable state statutes, but a nonmetallic mining reclamation ordinance may apply to activities related to solid or hazardous waste disposal which are conducted at a facility such as activities to obtain nonmetallic minerals to be used for lining, capping, covering, or constructing berms, dikes, or roads for the solid waste facility or the hazardous waste facility.

Section Seven: Ordinance/Permit.

- a. The persons subject to this ordinance shall comply with all applicable federal standards, state statutes, county ordinances and this ordinance.
- b. The Town Clerk of the Town of New Hope shall provide copies of this ordinance, at a cost set by the Town of New Hope Public Records Ordinance, to any applicant requesting copies of this ordinance.
- c. The applicant and the person subject to this ordinance shall comply with the following:
 1. No person shall be issued or re-issued a nonmetallic mining permit in the Town of New Hope until the appropriate fee has been paid to the Town Clerk of the Town of New Hope and all, if any, delinquent taxes or special assessments owed by the - perspective permittee or affecting the mining site have been paid to the Town of New Hope.
 2. No person shall be issued or re-issued a nonmetallic mining permit in the Town of New Hope who has failed to properly and fully complete and submit to the Town Clerk of the Town of New Hope the application form as developed and provided by the Town of New Hope.
 3. No person shall be issued or re-issued a nonmetallic mining permit in the Town of New Hope if the nonmetallic mining site will be located in any of the following areas:
 - i. Conservancy zoned land
 - ii. Residential zoned land
 - iii. Archaeological or historical site areas
 - iv. Sensitive lands
 - v. Close proximity to residences or subdivisions at the time of the original permit (Refer to Section 8(b))
 - vi. In any location which causes haul routes to be located on designated Rustic Roads in the Town of New Hope
 4. No person shall be issued or re-issued a nonmetallic mining permit in the Town of New Hope if the applicant for the nonmetallic mining permit:
 - i. Fails to develop and submit to the Town Board of the Town of New Hope a nonmetallic mining operation plan as specified in Section 5 (e) and fails upon operation to comply with the plan.
 - ii. Fails to meet federal, state and/or county regulations governing operations at their nonmetallic mining site in the Town of New Hope.
 - iii. Fails to comply with the operational hours for operation of the nonmetallic mining site. (Refer to Section 8(d).)
 - iv. Fails to install and maintain a gate at each entrance and exit of the nonmetallic mining site accessing town roads or county or state highways to prevent trespassing.
 - v. Fails to provide adequate sanitary facilities at the nonmetallic mining site, at a minimum, portable toilets, and fails to keep the nonmetallic mining site free of trash, noxious weeds, and other debris during and after daily operations at the nonmetallic mining site.
 - vi. Fails to respond to specific questions by the Town Board based on concerns of possible ordinance violations.
 - vii. Fails to comply with the Town of New Hope Ordinances and Land Use Plan.

Section Eight: Other Provisions.

Any permit granted hereunder shall be subject to the following conditions:

- a. No nonmetallic mining site (acres open and utilized at any one time) greater than 5 acres in size or in conflict with the existing Land Use Plan in the Town of New Hope. Larger sites will require a public hearing and Town Board approval.
- b. No nonmetallic mining site (includes mining, stockpiling or land disturbance) shall take place within the following safety setbacks:
 - i. 100 feet of adjoining property lines.
 - ii. 750 feet of any existing structures intended for human habitation, not owned by the permittee.
 - iii. 100 feet of any road right-of-way of any existing road.
 - iv. Less restrictive setbacks may be used if an agreement is reached between the permittee and the adjoining property owner.
- c. No vehicle entering or leaving the nonmetallic mining site shall violate any road weight limits set by the Town of New Hope as per Wisconsin State Statute 349.16. A bond of \$ 100,000 per mile of town road utilized by nonmetallic mining site traffic must be submitted to the Town Clerk before any permit is granted to ensure the quality of the road is maintained. An agreement must be reached with the Town of New Hope regarding the maintenance and repair of town roads used as a haul route. Such agreement shall pertain to improvements, repairs and maintenance of any town roads before, during or after project completion to be used for a haul route. Such agreement shall take into account the dust from additional truck traffic, road design as specified in Wisconsin Department of Transportation Chapter 204 Existing Town Road Improvement Standards, existing usage of the town road, location and number of residents along the haul route.
- d. No vehicles or equipment utilized for nonmetallic mining shall be operated by the permittee or the permittee's agents or employees in or adjacent to the nonmetallic mining site during the following times: between 6 p.m. and 7 a.m. Monday through Friday and all hours during Saturday and Sunday. Any exceptions in hours will be reviewed case by case.

Section Nine: Penalty.

- a. The penalty for violating the terms of this ordinance shall be \$200 per day for each day a violation occurs. Each day of continued violation is a separate offense.
- b. In addition, in the event of a violation of this ordinance, the town board may take appropriate action to enforce this ordinance, including action to terminate or modify licensed, application for injunctive relief, action to compel performance, or other court action, to prevent, restrain, correct or abate such violation(s). To the extent legally permissible, the court may award costs, disbursements and reasonable attorneys' fees required in enforcing this ordinance.

Section Ten: Definitions.

- a. "Nonmetallic mining" means all of the following: 1) operations or activities for the extraction from the earth for sale or use by the permittee of mineral aggregates or nonmetallic minerals such as stone, sand, gravel, asbestos, beryl, clay, feldspar, peat, talc and topsoil, including such operations or activities as excavation, grading and dredging; 2) on site processes that are related to the extraction of mineral aggregates or nonmetallic minerals, such as stockpiling minerals, blending mineral aggregates or nonmetallic minerals with other mineral aggregates or nonmetallic minerals, crushing, screening, scalping and dewatering.
- b. " Permittee" means any person who is engaged in, or who has applied for a permit to engage in nonmetallic mining, whether individually, jointly or through subsidiaries, agents, employees, contractors or subcontractors.
- c. "Sensitive lands" means lands recommended to remain in their natural state or for non-intensive uses such as recreation, wildlife habitat and forest management. This category applies to lands, which are environmentally important or sensitive, including shore lands, wetlands, floodplains, steep slopes and public resource areas.
- d. All definitions set forth in Wisconsin Statute Section 295 shall apply to this Ordinance.

Section Eleven: Severability.

If any section, provision or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

Section Twelve: Effective Date.

This Ordinance shall be effective after adoption by the Town Board and publication or posting as provided by law.

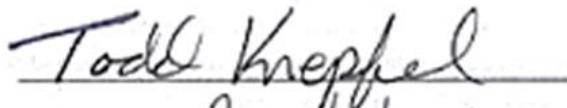
Approved: November 21, 2023

Posted: November 21, 2023

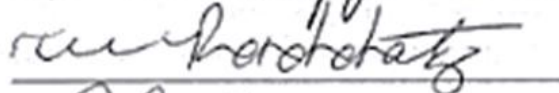
Effective: November 21, 2023

Signatures of Town Board:

Clerk Todd Kneffel
Town Chairperson



Tim Raddatz
Town Supervisor



Ray Reser
Town Supervisor



Attest: Pat Zellmer
Town Clerk

