

March 27, 2012 **Moratorium Ordinance Proposal**

STATE OF WISCONSIN

TOWN OF AUBURN

CHIPPEWA COUNTY

SECTION 1—TITLE AND PURPOSE

The title of this ordinance is the Town of Auburn Ordinance to Impose a Moratorium on the Expansion of Existing and Creation of New Nonmetallic Mining Operations Within the Town of Auburn, Chippewa County Pending the Study of Possible Legislative Action.

The purpose of this moratorium is to allow the Town of Auburn, Chippewa County adequate time to study the possible impacts that nonmetallic mining operations and processing plants related to nonmetallic mining may have on the health, safety, and welfare of the residents of the Town of Auburn, Chippewa County including air quality and water quality concerns; potential impact to the infrastructure of the town, property values, and the local economy; to allow the Town and town residents the opportunity to consider enacting relevant regulatory ordinances; to determine the advisability of amending the Town Comprehensive Plan; and to review and consider amending or adopting other police powers, licensing ordinances or other ordinances so as to effectively regulate nonmetallic mining operations and related processing plants.

SECTION 2---AUTHORITY

The town board has the specific authority granted under the village powers of the town board pursuant to Sec. 60.10 (2)(c), 60.22 of Wis. Statutes and pursuant to Sec. 60.23, 60.61, and 60.62 of Wis. Statutes.

SECTION 3----ADOPTION

This ordinance adopted by a majority vote of the town board on roll call vote with a quorum present and voting and proper notice having been given, provides for the imposition of a moratorium on the creation or commencement of new nonmetallic mining operations within the Town of Auburn, Chippewa County.

SECTION 4----DEFINITIONS

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

(2) "Nonmetallic mining" means any of the following:

- a. Extraction from the earth of mineral aggregates or nonmetallic minerals for off-site use or sale, including drilling and blasting as well as associated activities such as excavation, grading, and dredging of such materials.
- b. Manufacturing or processing operation that may involve the use of equipment for the crushing, screening, separation, or blending of the mineral aggregates or nonmetallic minerals obtained by extraction from the mining site or with minerals transferred from off-site.
- c. Manufacturing processes aimed at producing nonmetallic products for sale or use by the operator.
- d. Stockpiling of nonmetallic products for sale or use of off-site and stockpiling of waste materials.
- e. Transport of extracted nonmetallic materials, finished products or waste materials to or from the extraction site.
- f. Disposal of waste materials as defined in this ordinance.
- g. Reclamation of extraction or mine sites.

(3) "Waste material" means the non-marketable by-product that results directly from or is displaced by extraction or that is by-product of a manufacturing process that is scheduled for disposal at the extraction or mine site of a nonmetallic mine or processing operation or some other site as part of a permitted and approved reclamation plan.

(4) A "mine site" or "site" means land from which mineral aggregates or nonmetallic minerals will be extracted for sale or use by the land owner or any agent of the land owner, including all land on which is or will be located any structures, equipment, storage facilities, washing or screening facilities, private roads or haulage ways associated with nonmetallic mining operations; and all contiguous lands to the nonmetallic operation under common ownership or control of the owner or his/her agent.

(5) Being "engaged" in the mining process means that mining equipment is on site and is currently in use by its operators for the purpose of nonmetallic mining.

SECTION 5---MORATORIUM IMPOSED

The Town Board of the Town of Auburn, Chippewa County hereby prohibits the commencement of any nonmetallic mining operation or related processing plant operation after the date of the adoption and publication of this Ordinance for the duration of this moratorium. For purposes of this Ordinance, the terms "commencement" and "commenced" shall refer to the presence and actual prior operation of heavy equipment engaged in the nonmetallic mining process under applicable county and state permits and approved reclamation plan(s) granted and issued prior to the effective date of this ordinance, including excavating, grading, site clearance, and similar substantial and material heavy equipment operation. Further, there is hereby established a temporary stay on the acceptance, review, and approval by Town officials, staff, consultants of any applications for any permits for Heavy Vehicle Operators under Chapter 45 of the Town's Code of Ordinances which relate to nonmetallic mining operations which were not commenced prior to the effective date of this Ordinance for the duration of this moratorium.

SECTION 6---DURATION OF MORATORIUM

This Ordinance shall be effective for the period of not longer than nine (9) months following the date of adoption of this ordinance by the town board.

SECTION 7---ACTION AND STUDY DURING MORATORIUM

During the moratorium imposed by this ordinance the Town Plan Commission shall study and analyze the impact of nonmetallic mining and shall make its final recommendations to the Town Board by no later than October 1, 2012.

The Plan Commission shall be charged with researching the issues associated with nonmetallic mining operations and making recommendations to the Town Board regarding regulatory and police powers necessary to responsibly manage new, existing or proposed nonmetallic mining operations. Issues under consideration by the Plan Commission shall include but are not limited to possible regulatory structures including licensing and blasting ordinances, and developer's agreements; health concerns; environmental impacts; impacts on town infrastructure; impacts on the local economy and financial considerations for the town. The Plan Commission shall make reports to the Town Board as directed by the Town Board.

SECTION 8---SEVERABILITY CLAUSE

If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

SECTION 9---PENALTY PROVISION

Any person, partnership, corporation, or other legal entity that fails to comply with the provisions of this Ordinance shall, upon conviction, pay a forfeiture of not less than \$1,000.00 plus the applicable surcharges, assessments, and costs for each violation. Each day a violation exists or continues constitutes a separate offense under this ordinance. In addition, the Town Board may seek injunctive relief from a court of record to enjoin further violations.

SECTION 10---APPLICABILITY

This moratorium ordinance shall not apply to those nonmetallic mining operations or processing plants that are operating pursuant to the terms of a developer's agreement duly approved by the Town of Auburn during the duration hereof, if any.

In addition, this ordinance shall not apply to any nonmetallic mining operation or processing plant that has commenced a mining process prior to the effective date of this ordinance, but only to the extent the operation and/or processing plant is operating under and in compliance with all existing (as of the effective date hereof) approved, and issued applicable state and county permits. Such operations shall be permitted to continue in accordance with applicable Wisconsin law.

SECTION 11----EFFECTIVE DATE

The ordinance is effective on publication.

The town clerk shall properly publish this ordinance as required under Sec. 60.80(2) of Wis. Statutes as a Class I Notice in a newspaper.

Adopted this ____ day of March, 2012.

Signatures of Town Board:

Paul Scheidecker, Town Chairperson Kevin Ludwigson, Town Supervisor

Attest:

Al Blaha, Town Supervisor

By: _____

Judy Misner, Town Clerk