

TOWN OF SPRING PRAIRIE
WALWORTH COUNTY WISCONSIN

AMENDED ORDINANCE #2020-01

AN ORDINANCE TO REGULATE NON-METALLIC MINING

An ordinance providing for the creation and adoption of "Chapter XXVI — Regulation of Non-Metallic Mining" to be added to and become part of the Code of Ordinances for the Town of Spring Prairie, Walworth County, Wisconsin.

The Town Board of the Town of Spring Prairie, Walworth County, Wisconsin, has the specific authority under Wisconsin State Statutes Section 60.10(2)(c) and *Zwielfelhofer v. Town of Cooks Valley*, 338 Wis.2d 488, 523 (2012) to adopt this ordinance.

This ordinance, adopted by a majority of the Town Board on a roll call vote with a quorum present and voting and proper notice having been given, hereby adopts the following:

SECTION 26.0. Chapter XXVI Non-Metallic Mining Ordinance is hereby created, established and adopted as follows:

SECTION 26.1. Definitions.

- a. "Quarry" as used herein shall mean any place where material consisting in whole or in part of rock, stone or other non-metallic materials, are removed from their natural state by cutting, blasting, digging or pushing, or by any other method of extraction, whether herein specified or not, and sold or held for sale or distribution.
- b. "Gravel pits" and "sand pits" as used herein shall mean any place where gravel or sand is removed from its natural state of deposit by digging, pushing, or any other method of extraction, whether herein specified or not, and sold or held for sale or distribution.
- c. "Concrete ready mix plants" as used herein are defined as plants where water, gravel, sand, crushed stone, or other aggregate is mixed with cement and placed within a truck or trucks for the purpose of mixing such ingredients and to create and manufacture concrete thereby while such truck is in transit to its ultimate point of delivery.

- d. "Asphalt and tar paving mix plants" as used herein are defined as plants wherein asphalt, tar, or other petroleum products or by-products are prepared or mixed, either alone or with other ingredients, as a material for paving or surfacing.

SECTION 26.2. Permit Required. No person, persons, firm, corporation or municipality shall operate a quarry, gravel pit, sand pit, an asphalt or tar paving mix plant, or a concrete ready mix plant within the Town of Spring Prairie, Walworth County, Wisconsin, without first obtaining a permit to do so from the Town Board as hereinafter provided.

SECTION 26.3. Applications; Fee. Application for permits required under Section 26.2 above shall be submitted in writing, in duplicate, to the Town Board and shall set forth the following:

- a. Name and address of the applicant.
- b. Name and address of owner of the site on which use is to take place.
- c. Description of site for use by lot, block and recorded subdivision or by metes and bounds.
- d. Address of site.
- e. List of equipment and machinery to be used to conduct operations.
- f. Zoning of the site to be used.
- g. Depth of proposed excavation.
- h. The means and methods of extraction.
- i. Statement of the nature of the proposed operation, including: a description of the machinery to be used; the type and amount of explosives to be used or stored, if any; the type and size of buildings to be constructed; the smoke and dust control devices to be utilized, if any; the highways to be used for the truck traffic to and from the location; proposed devices for muffling of noise, if any; the employment of safety devices to protect the public from dangers inherent to the proposed use; deodorants or odor control devices, if any; method of concealing unsightly deposits, if any; and any other pertinent data which the applicant deems material.
- j. A description of the surrounding property and its use.
- k. Hours of operation.

- l. The method and manner of draining surface water and accumulated water from the licensed premises.
- m. The method and manner of restoring the areas of the operation after the termination of operations to a condition of practical usefulness and reasonable physical attractiveness.

The application shall be accompanied by a fee of \$2,500.00 to defray cost of publication of notice of hearing on said application, investigation, the use of an engineer or consultant and public hearing, if any.

SECTION 26.4. Review; Hearing. Upon receipt of an application submitted as provided in Section 26.3 above, the Town Board and Planning Commission shall inspect the site for which a permit is requested and shall review the proposed structures, neighboring land and water uses, driveway locations, highway access, traffic generation and circulation drainage, waste disposal, water supply system, effect of the proposed use and operation upon use of surrounding lands, natural beauty, soil erosion, water quality, wildlife habitat and shoreland cover and method, manner and practicality of restoration of the area after cessation of use. The Town Board shall set a date for public hearing upon such application, which said date shall be not more than forty-five (45) days after the receipt of the application by the Town Board. A public hearing shall be held by the Planning Commission at its regular meeting place and a notice of said meeting shall be forwarded by mail to the applicant and all persons owning adjacent property and properties lying within one half-mile of the proposed site. In addition, the Town Clerk shall post a notice of such meeting and a notice shall publish at least ten (10) days before the date of said public hearing. As an alternative to publishing said notice, notice of said hearing may be posted in three public places within the said Town not less than five (5) days prior to the date of said hearing. At such public hearing, the Planning Commission shall hear all persons interested in granting or denying of said permit and may, if it deems fit, take testimony relative to the application. Additionally, the Town may have its own engineer or consultant. After a decision has been rendered by the Planning Commission, the Planning Commission will make a recommendation to the Town Board, which will place it on the agenda for the next scheduled monthly meeting

SECTION 26.5. Where the permit applied for relates to the continuation of an existing business as enumerated herein, the Town Board shall have the option to require a public hearing, but in absence of such requirement, no public hearing shall be held.

SECTION 26.6. Determination by Town Board. Within ninety (90) days after the public hearing, the Town Board shall either grant or deny said permit. The Town Board shall deny the permit if it determines that the development and operation of the proposed mine is not in the best interests of the citizens of the Town, and will not be consistent with protection of the health, safety and general welfare. In making its decision, the Town Board shall consider the location of the proposed mine, the applicant's proposed mining and related operations, the expected impacts

on area roads and road safety, the applicant's experience and track record on operating other mines and related operations, whether or not it would be compatible with adjacent agricultural uses and consistent with Town goals and objectives, and any other factors relating to the best interests of the citizens of the Town and the protection of health , safety and general welfare.

SECTION 26.7. The Town Board, as a condition to the issuance of a permit, may require conditions as to type of construction, construction commencement and completion dates; landscaping; fencing; location, size and number of signs; water supply facilities; waste disposal systems; floodproofing; street dedication; operational control; hours of operation; parking areas; repair of public roads used; highway access restrictions; deed restrictions; traffic \control; inspections and testing of area water wells where the permitted use includes excavation below the water table and sureties to insure performance of such conditions in form determined by the Town Board upon the Town Board finding that such condition or conditions are proper for protection of health, safety and/or welfare of the public.

SECTION 26.8. As a precondition to granting any permit hereunder, the Town Board shall require an agreement with the applicant whereby the applicant agrees to restore the site to a condition of practical usefulness and reasonable physical attractiveness. The Town Board shall demand that a performance bond, written by a licensed surety company in an amount sufficient to secure the performance of the restoration agreement be furnished to the Town, in such amount as the Town may determine.

SECTION 26.9. Term of Permit. Any permit issued hereunder for the mining operation shall be for a period not to exceed two (2) years and may be renewed upon application for successive periods of not more than two (2) years each. Modifications or additional conditions may be imposed upon application for renewal and the procedure for renewal shall be the same as that in application for an original permit excepting a renewal fee, shall be \$1,000.00. In any event, such permit shall terminate:

- a. In the event the use specified in the permit is not carried on in accordance with the representations contained in the application or conditions required by the Town Board as precedent to granting the permit.
- b. Upon change of ownership of the site for which the permit is issued; or upon change of ownership of the firm, company, corporation or municipality operating the licensed business.
- c. In the event the use for which the permit was issued is discontinued for more than one (1) year after the same is granted by the Town Board.

SECTION 26.10. In the event the permit is terminated pursuant to Section 26.9, another permit must be applied for and obtained by the proposed operator as a condition precedent to the

continued operation of the permitted business, the operation of a new business, or the resumption of the discontinued business.

SECTION 26.11. In the event of application for reissuance of a permit pursuant to subsection 26.10 hereof, the Town Board may consider the same with holding a public hearing.

SECTION 26.12. Any permit issued pursuant to subsection 26.10 hereof shall be deemed an original permit and the permitted operator shall be bound by the terms thereof.

SECTION 26.13. Revocation. The following acts shall constitute grounds for revocation of permit:

- a. Any change in the manner of operation specified in the application as approved by the Town Board in granting the original permit. .
- b. Failure to comply with conditions required by the Town Board as conditions precedent to issuance of the permit.
- c. Failure to discharge or drain surface water or accumulated water from the permitted premises in such method and manner as will not interfere with the use of lands, drains, and ditches of other persons, firms or corporations, municipalities, owned or otherwise.
- d. Failure during and after excavation to provide adequate lateral support to roadways or to the lands abutting property owners.

Any proceeding to revoke a permit shall be instituted by the Town Board by the mailing of a notice of hearing on revocation to the holder. Such notice shall be mailed at least ten (10) days prior to the date of hearing. At such hearing, the holder may appear personally or by an attorney and present a defense to proposed revocation. The Town Board shall have seven (7) days after such hearing to make a determination of whether grounds of revocation exist. If the Board finds that any of the conditions specified in the ordinance as grounds for revocation exist, the Town Board shall revoke such permit and notify the holder by mail addressed to the holder at the address shown on the application. The holder shall immediately cease operation of the permitted premises.

SECTION 26.14. Denial of Permit. In the event a permit is denied for the operation of any business enumerated herein with respect to any particular parcel of realty, no application for the same business on the same parcel of land, or any part thereof, may be filed within one (1) year from the date of such denial. In the event, however, that a new application shall reveal a material difference in any of the items specified in subsection 26.3 hereof, the Town Board may,

upon a finding that the new application does include such material difference, proceed to hear and determine such application within said year.

SECTION 26.15. Penalties/Injunctive Relief.

- a. Any person, firm, or corporation who violates, disobeys, neglects, omits or refuses to comply with, or who resists the enforcement of any of the provisions of this chapter, shall forfeit not less than \$100.00 nor more than \$500.00, together with the costs of prosecution, and in default of payment thereof, by imprisonment in the County Jail for a term of not more than thirty (30) days, or until such judgment is

paid in the case of an individual, and every day of violation shall constitute a separate offense.

- b. Injunction. In case any premises are used in violation of this chapter, an action in the name of the Town may be instituted to enjoin such violation or intended violation, and this remedy shall be in addition to other remedies set forth in this Section.

January

Introduced and adopted this 13 day TOWN OF ~~SPRING PRAIRIE~~ **SPRING PRAIRIE** of , 2020.

By: Thomas Bolfert
Thomas Bolfert, Town Chairman

By: Lynn Lein
Lynn Lein, Supervisor

By: Donald Trimberger II
Donald Trimberger II, Supervisor

ATTEST: Debra A. Collins
Debra A. Collins, Clerk-Treasurer

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