

**TOWN OF ELLSWORTH  
ORDINANCE NO. 2012-3  
To impose a moratorium on the expansion  
of new nonmetallic mining operations**

**SECTION 1 - TITLE AND PURPOSE**

The title of this ordinance is the Town of Ellsworth Ordinance to Impose a Moratorium on the Expansion of Existing and Creation of New Nonmetallic Mining Operations within the Town of Ellsworth, Pierce County, WI pending the Study of Possible Legislative Action.

The purpose of this moratorium is to allow the Town of Ellsworth, Pierce County, WI 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 Ellsworth, 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 the enacting of 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 Wis. Stat. §60.10 (2)(c), §60.22 , §60.23, §60.61, and §60.62 .

**SECTION 3 - ADOPTION.**

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

**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 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 sites.
3. “Waste material(s)” means the nonmarketable 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 of a nonmetallic mine site or processing operation or some other site as part of a 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 or lessee 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, his/her agent, or lessee.

## **SECTION 5 - MORATORIUM IMPOSED**

The Town Board of the Town of Ellsworth, Pierce County, WI hereby prohibits the expansion of any existing nonmetallic mining operation or related processing plant beyond its current level of operations as of the date of the adoption of this Ordinance, and further prohibits the creation of any new nonmetallic mining operation or related processing plant in the Town while this moratorium is in effect. Further, there is hereby established a temporary stay on the acceptance, review, and approval by Town officials, staff, consultants of any application of any permits for nonmetallic mining operations

after the effective date of this Ordinance until the effective period of the moratorium expires.

## **SECTION 6 – APPLICATION**

This moratorium does not apply to the following:

- a. Excavation or grading for the construction, reconstruction, maintenance or repair of a public highway, railroad, or other transportation facility.
- b. Excavation or grading solely for domestic or farm use at a person’s residence or farm.
- c. Existing non-metallic mining operators to the extent of their current and customary level of operations as reflected in the five years preceding the enactment of this ordinance.

## **SECTION 7 – DURATION OF THE MORATORIUM**

This Ordinance shall be effective for the period of not longer than one year following the date of adoption of this ordinance by the Town Board.

## **SECTION 8 - ACTION AND STUDY DURING MORATORIUM DRAFT**

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 at least ninety days before the end of the moratorium. The Town Board may require the recommendations to be made earlier as the Town Board, in its sole discretion, deems necessary and in the public interest. 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, but not limited to, zoning, licensing, and blasting ordinances, road requirements/ agreements, and developers 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 9 - SEVERABILITY CLAUSE**

If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect the 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 10 - PENALTY PROVISIONS**

Any person, partnership, corporation, or other legal entity that fails to comply with the provision of this Ordinance shall, upon conviction, pay a forfeiture of not less than \$2000 , 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 11 - EFFECTIVE DATE**

This Ordinance is effective upon publication. The Town Clerk shall properly publish this Ordinance as required under Wis. Stat. §60.80 (2) as a Class I Notice in the newspaper.

Adopted this 6<sup>th</sup> day of August, 2012.

**TOWN OF ELLSWORTH:**

\_\_\_\_\_  
Barry Foy, Chair

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Everett Muhlhausen, Town Supervisor

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Jeffrey Redding, Town Supervisor

**ATTEST:**

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Phyllis Beastrom, Town Clerk

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