

LEGISTAR #44739 2ND Substitute

DRAFTER'S ANALYSIS: The City of Madison zoning code does not permit mining in the city. Yet, the City currently contains mines that operate as legal nonconforming uses because they were operating legally when they were annexed into the City. These mines may continue operating as nonconforming uses until the mine's resources are exhausted or the operator decides to transition the mine to a different use.

Additionally, most mine operators own additional property, often adjacent to the nonconforming mine, that they cannot mine because it was not part of the original legal nonconforming use. Some of these operators have approached the City about the ability to mine these additional properties.

Thus, the City currently contains active mines over which it has no zoning regulations, and mine operators own additional property they cannot mine because the city zoning code does not permit it.

Wis. Stat. § 62.23(7)(am) grants cities the power to regulate mining through zoning. This ordinance recognizes that the City contains active nonconforming quarries and that the City benefits from the close proximity of quarry resources for local road and other construction projects. The ordinance also recognizes that quarrying operations near the city present potential health and welfare concerns to neighboring property owners and that these concerns may be attenuated through a cohesive set of quarrying regulations enforceable by the City through zoning. Accordingly, this ordinance creates a new Special District under the zoning code called the nonmetallic mineral extraction district (ME).

Under this ordinance, mining operators may apply to rezone their property to combine any legal nonconforming use with other adjacent property to create a ME district. Applications to rezone as a ME district would go through the normal rezoning process and be subject to the usual standards for rezoning under Sec. 28.181, MGO. Any property rezoned ME would be subject to the supplemental regulations contained in this ordinance. Additionally, blasting in a ME District would require conditional use approval that must be renewed every five years.

The 1st substitute of this proposed ordinance amends the original version of this ordinance as a result of two amendments recommended by the Plan Commission. The Plan Commission's first amendment resulted in a change in sub. (q) that makes it clear that any additional conditions the Plan Commission places on a blasting conditional use approval may not impose regulations or restrictions that are more stringent than state blasting regulations. The Plan Commission's second amendment, found in sub. (q) 11., relates to the blasting conditional use renewal process: it states that if an operator applies for the renewal of a blasting conditional use and shows that in the previous five (5) years the Nonmetallic Mining Site has operated in compliance with the blasting conditions listed in sub. (q) 1.-10. and any additional blasting conditions imposed by the Plan Commission, then there shall be a presumption that the standards for conditional use approval are met and that the Plan Commission will grant renewal of the conditional use approval. These amendments were recommended after testimony from mining operators requesting more certainty in the blasting conditional use process.

This second substitute contains all of the changes included in the first substitute, and addresses three additional concerns regarding extraction of materials adjacent to a freeway, rail corridor, or property zoned for industrial use. This second substitute also clarifies how the \$5,000,000 insurance may be constituted and adds language addressing blasting when the weather conditions include fog or clouds.

The Common Council of the City of Madison do hereby ordain as follows:

Approved as to form:

1. Section 28.100 entitled “Nonmetallic Mineral Extraction District” of the Madison General Ordinances is created to read as follows:

“28.100 NONMETALLIC MINERAL EXTRACTION DISTRICT (ME)”

- (1) Statement of Purpose.
The Common Council recognizes that nonmetallic mines have operated within the City of Madison and in bordering communities for decades and have served as a source of materials for local road and other construction projects. These nonmetallic mines also often recycle aggregate and construction materials that can be reused in local road and other construction projects, thereby increasing the reuse of materials and reducing usage of local landfills. As the City continues to grow, more nonmetallic mines will come within its jurisdiction. The Common Council also recognizes that nonmetallic mines present potential health, safety and welfare concerns for the City’s residents, transients and natural environment. The purpose of this district is to therefore set forth rules and procedures related to the construction, installation, alteration, design, operation and use of all nonmetallic mines that will allow mining operations within the City while protecting the health, safety and welfare of residents and transients, and further the appropriate use and conservation of land and water resources.
- (2) Permitted Use.
Except for blasting, nonmetallic mining shall be a permitted use in a nonmetallic mineral extraction district.
- (3) Conditional Uses
(a) Blasting in a nonmetallic mineral extraction district.
- (4) Dimensional Requirements, Permitted and Conditional Uses.
Requirements represent minimums applicable to buildings and structures unless otherwise noted. Dimensions are in feet unless otherwise noted.

Nonmetallic Mining District	
	Nonmetallic mining uses
Lot area	5 acres
Lot width	300
Front yard setback	30
Side yard setback	80
Rear yard setback	100
Maximum height	none
Maximum lot coverage	n/a

2. Subsection entitled “Nonmetallic Mining” of Section 28.151 entitled “Applicability” of the Madison General Ordinances is amended by creating therein the following:

“Nonmetallic Mining.

- (a) A nonmetallic mining operator may not process or extract nonmetallic minerals within one hundred (100) feet of the boundaries of a nonmetallic mining site, unless a boundary abuts a freeway, rail corridor, or property zoned for industrial use, in which case a nonmetallic mining operator may not process or extract materials within fifty (50) feet of such boundaries.
- (b) In order to minimize tracking of materials from the nonmetallic mining site onto adjacent public roads, the access drive to any nonmetallic mining site shall be created with concrete or hot-mix asphalt for at least 100 feet unless a shorter distance is approved by the City Engineer. The nonmetallic mining operator shall maintain any access drive in a dust-free manner and shall remove any dust or mud tracked from adjacent public roads as required by Chapter 3, MGO.
- (c) A nonmetallic mining site shall be accessed only through designated entrances as illustrated on plans approved by the City Traffic Engineer.

- (d) All trucks traveling to or from a nonmetallic mining site shall use haul routes designated by the City Traffic Engineer. Any restrictions on the routes shall be no more restrictive than those applicable to other trucks or carriers using the same routes.
- (e) Security gates on the access points to a nonmetallic mining site shall have no trespassing signs.
- (f) A safety fence shall be installed around the entire boundary of the nonmetallic mining site unless an area of the nonmetallic mining site has already been reclaimed in compliance with Chapters 21 and 37, MGO, and Wis. Admin. Code ch. NR 135.
- (g) A nonmetallic mining operator shall use spray bars for water in the crushing process to reduce dust. The use of spray bars is not required when the temperature is below freezing. The nonmetallic mining operator shall spray private access roads within the nonmetallic mining site with water as necessary to control dust.
- (h) All trucks and excavating equipment used on a nonmetallic mining site shall have functioning muffler systems that meet or exceed current industry standards for noise abatement and shall not use compression brakes.
- (i) Any erosion control or stormwater management plan required under state law shall be provided to the City Engineer, as well as any erosion control and/or stormwater management permit and plan that may be required by Chapter 37, MGO.
- (j) A nonmetallic mining operator shall provide evidence of commercial general liability insurance in the amount of at least five million dollars (\$5,000,000) per occurrence, which may be made up by carry a one million (\$1,000,000) commercial general liability policy and four million (\$4,000,000) umbrella policy. These policies shall name the City of Madison, its officers, officials, agents and employees as additional insureds, and apply on a primary and non-contributory basis.
- (k) A nonmetallic mining operator shall comply with all Wisconsin Department of Natural Resources and Federal Mine Safety and Health Administration Standards for particulate emissions as further described in Wis. Admin. Code § NR 415.075 and § NR 415.076.
- (l) A nonmetallic mining site shall be available for inspection by City staff with at least forty-eight (48) hours prior written notice. However, in the event the City has probable cause to believe that a violation of this ordinance has occurred or is occurring, an inspection may occur at other times upon reasonable advance notice to the nonmetallic mining operator. All inspections require an escort by the nonmetallic mining operator in accordance with Mine Safety and Health Administration laws, rules and regulations.
- (m) A nonmetallic mining operator shall conduct at least one public meeting each year between January 4 and February 15 for the purpose of fostering communication between the nonmetallic mining operator, its neighboring residents, and the City. The nonmetallic mining operator shall provide Class I notice of the date, time, and place of the meeting to the owners of property located within five hundred (500) feet of the boundaries of the nonmetallic mineral extraction district. The nonmetallic mining operator shall also provide notice in writing to the City Engineer and City Zoning Administrator inviting City staff to attend the public meeting.
- (n) A nonmetallic mining operator shall maintain a compliance phone number and email address for neighboring residents to report any problems or concerns.
- (o) A nonmetallic mining operator shall maintain on file with the City Engineer a Site/Operations Plan drawn to measurable scale large enough to show:
 - 1. Zoning district boundaries for the nonmetallic mineral extraction district.
 - 2. Existing contour lines.
 - 3. Existing natural features including lakes, perennial/navigable streams, intermittent streams, floodplains, wetlands, drainage patterns, and archaeological features.
 - 4. Existing roads, driveways, and utilities.
 - 5. Specific location of proposed extraction area, staging area, equipment storage.
 - 6. Location of driveways.
 - 7. Phasing plan, if applicable.
 - 8. Location of permanent structures, including scales, offices, or mixing plants.
 - 9. Location of signage.
- (p) A nonmetallic mining operator shall submit an annual mining report on or before March 1 of each year to the City Engineer detailing:
 - 1. All nonmetallic mining and recycling activity occurring on the property in the previous year, including the number of acres being actively mined and officially reclaimed, and the frequency and location of blasting.
 - 2. The number and nature of complaints received during the previous year and the operator's response to those complaints.

3. The efforts made in the previous year to improve blasting techniques and other nonmetallic mining activities in order to minimize adverse impacts on surrounding roads and properties.
 4. Nonmetallic mining plans for the upcoming year, including the number of acres that may be converted from inactive to active mining use, the number of acres that may be officially reclaimed, the anticipated frequency and location of blasting, and whether any mining activities will result in excavation below the water table.
 5. A statement that the Site/Operations Plan required in sub. (o) above and currently on file with the City Engineer is current and accurately represents the nonmetallic mining site as of the date of filing the annual report.
- (q) Blasting at a nonmetallic mine may be allowed only upon conditional use approval by the Plan Commission subject to the following conditions and any additional conditions required by the Plan Commission, provided that any additional conditions may not impose restrictions or regulations pertaining to blasting that are more stringent than those set by the State in Wis. Admin. Code chs. SPS 307 and 308:
1. The nonmetallic mining operator shall all times meet the blasting requirements contained in Wis. Stat. § 101.15, Wis. Admin. Code chs. SPS 307 and 308, the National Fire Protection Association (NFPA) 495 chapter 10, Sec. 34.01(13) (Fire Code), as may be amended.
 2. Hours of blasting shall be limited to the hours specified in Wis. Admin. Code § SPS 307.42, as may be amended.
 3. The nonmetallic mining operator shall provide notification of blasting as required by Wis. Admin. Code § SPS 3.07.41, as may be amended.
 4. The nonmetallic mining operator shall provide the Madison Fire Department with twenty-four (24) hours notice of blasting on a mining site. The notice should indicate the location of blasting within the mine, the intended locations for the seismographs required under (q)7. below, and whether any of the weather conditions described in (q)10. below are expected to exist at the time of blasting.
 5. Blasting resultants shall not exceed the levels contained in Wis. Admin. Code § SPS 307.44.
 6. The nonmetallic mining operator shall sound a pre-blast notification siren immediately before a blast.
 7. The nonmetallic mining operator shall install and maintain at least four (4) seismographs at locations near the boundary lines of the nonmetallic mining site, unless otherwise in consultation with City staff.
 8. All blasting shall be conducted by a certified Class IV or Class V operator and shall utilize the latest commercially available technology to minimize adverse blasting resultants.
 9. When feasible, the mining operator shall develop mining faces that advance away from or transverse or ninety (90) degrees to residential areas in order to minimize blasting resultants.
 10. When feasible, the mining operator shall avoid blasting when weather conditions include strong winds; foggy, hazy or smoky conditions with little or no wind; or significant cloud cover.
 11. Conditional use approval for blasting under this section shall expire after five (5) years. If a Nonmetallic Mining Operator applies for the renewal of a conditional use approval for blasting and shows that in the previous five (5) years the Nonmetallic Mining Site has operated in compliance with the blasting conditions listed in sub. (q) 1.-10. above and any additional blasting conditions imposed by the Plan Commission, then there shall be a presumption that the standards for conditional use approval are met and that the Plan Commission will grant renewal of the conditional use approval.
- (r) Hours of operation at a nonmetallic mining site shall be 6:00 a.m. to 6:00 p.m. unless otherwise required to fulfill obligations under a government contract.
- (s) The nonmetallic mining operator shall at all times maintain a Reclamation Plan which complies with Chapters 21 and 37, MGO, and Wis. Admin. Code ch. NR 135.”

3. Section 28.211 entitled “Definitions” of the Madison General Ordinances is amended by creating therein the following:

“Blasting Resultants mean flyrock, airblast, and ground vibration as regulated by Wis. Admin. Code § SPS 307.44, as may be amended.

Nonmetallic Mineral. Nonmetallic mineral means a product, commodity or material consisting principally of naturally occurring, organic or inorganic, nonmetallic, nonrenewable material. Nonmetallic minerals include, but are not limited to, stone, sand, gravel, beryl, diamond, clay, feldspar, peat, talc and topsoil.

Nonmetallic Mining. Nonmetallic mining means:

- (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, or plant nursery stock, or the removal of products or commodities for the primary purpose of constructing a building.
- (b) Processes carried out at a nonmetallic mining site 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.
- (c) Processes carried out at a nonmetallic mining site related to the preparation or processing of mineral aggregates or nonmetallic minerals or construction materials (such as asphalt shingles and metal rebar) obtained from outside the mining site. These processes include, but are not limited to, recycling, stockpiling of materials, blending mineral aggregates or nonmetallic minerals with other mineral aggregates or nonmetallic minerals or construction materials, crushing, screening, and dewatering.

Nonmetallic Mining Operator. Nonmetallic mining operator means any person who is engaged in nonmetallic mining, whether individually, jointly or through subsidiaries, agents, employees, contractors or subcontractors.

Nonmetallic Mining Reclamation. Nonmetallic mining reclamation means the rehabilitation of a nonmetallic mining site to achieve a land use specified in an approved nonmetallic mining reclamation plan, including removal or reuse of nonmetallic mining refuse, grading of the nonmetallic mining site, removal, storage and replacement of topsoil, stabilization of soil conditions, reestablishment of vegetative cover, control of surface water and groundwater, prevention of environmental pollution and, if practicable, the restoration of plant, fish and wildlife habitat.

Nonmetallic Mining Refuse. Nonmetallic mining refuse means waste soil, rock and mineral, as well as other natural site material resulting from nonmetallic mining.

Nonmetallic Mining Site. Nonmetallic mining site means the area zoned as a nonmetallic mineral extraction district.”