



Legislation Text

File #: 57544, Version: 1

**Fiscal Note**

No fiscal impact.

**Title**

Repealing Chapter 21 of the Madison General Ordinances to transfer nonmetallic mining reclamation responsibilities back to Dane County.

**Body**

DRAFTER'S ANALYSIS: This ordinance will repeal Chapter 21, MGO, relating to the management of nonmetallic mining reclamation. City Engineering Division manages reclamation of three (3) nonmetallic mines, all located on the far-east side of the City. Dane County manages reclamation of the other +100 mines in the county. To avoid redundancy and improve program implementation, Engineering recommends that the City transfer reclamation responsibility for our three nonmetallic mines back to Dane County. Passing this ordinance will in no way reduce nonmetallic reclamation requirements for the nonmetallic mines in Madison. Furthermore, passing this ordinance will not jeopardize oversight because Dane County will be obligated to manage reclamation for these mines once the City's ordinance is repealed. Dane County is aware of the City's proposal to repeal this ordinance and staff for both entities have discussed the transition of responsibility back to Dane County.

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

Chapter 21 entitled "Nonmetallic Mining Reclamation Ordinance" of the Madison General Ordinances is hereby repealed.

**EDITOR'S NOTE:**

Chapter 21 currently reads as follows:

**"CHAPTER 21  
NONMETALLIC MINING RECLAMATION ORDINANCE**

**21.01 TITLE.** Nonmetallic mining reclamation ordinance for the City of Madison.

**21.02 PURPOSE.**

The purpose of this chapter is to establish a local program to ensure the effective reclamation of nonmetallic mining sites on which nonmetallic mining takes place in the City of Madison, in compliance with Chapter NR 135, Wisconsin Administrative Code and Wis. Stat. ch. 295, subch. I.

**21.03 STATUTORY AUTHORITY.**

This chapter is adopted under authority of Wis. Stat. § 295.14(1), Section NR 135.32, Wisconsin Administrative Code, and Wis. Stat. § 62.11(3).

**21.04 RESTRICTIONS ADOPTED UNDER OTHER AUTHORITY.**

The purpose of this chapter is to adopt and implement the uniform statewide standards for nonmetallic mining required by Wis. Stat. § 295.12(1)(a), and contained in Chapter NR 135, Wisconsin Administrative Code. It is not intended that this chapter repeal, abrogate, annul, impair or interfere with

any existing rules, regulation, ordinances or permits not concerning nonmetallic mining reclamation previously adopted pursuant to other Wisconsin law.

#### **21.05 INTERPRETATION.**

In their interpretation and application, the provisions of this chapter shall be held to be the applicable requirements for nonmetallic mining reclamation and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes outside the reclamation requirements for nonmetallic mining sites required by Wis. Stat. ch. 295, subch. I and Chapter NR 135, Wisconsin Administrative Code. Where any terms or requirements of this chapter may be inconsistent or conflicting, the more restrictive requirements or interpretation shall apply. Where a provision of this chapter is required by Wisconsin Statutes, or by a standard in Chapter NR 135, Wisconsin Administrative Code, and where the provision is unclear, the provision shall be interpreted to be consistent with the Wisconsin Statutes and the provisions of Chapter NR 135, Wisconsin Administrative Code.

#### **21.06 SEVERABILITY.**

Should any portion of this chapter be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected.

#### **21.07 APPLICABILITY.**

The requirements of this chapter apply to all nonmetallic mining sites as follows:

- (1) This chapter applies to all operators of nonmetallic mining sites within the City of Madison as provided in Sections NR 135.02(1) and (2), Wisconsin Administrative Code, except where exempted in Section NR 135.02(3), Wisconsin Administrative Code.

#### **21.08 ADMINISTRATION.**

The provisions of this chapter shall be administered by The Division of engineering, under the general direction of the City Engineer.

#### **21.09 DEFINITIONS.**

Definitions for the purposes of this chapter are those contained in Section NR 135.03, Wisconsin Administrative Code, as well as the following:

- (1) City Engineer means the City Engineer and his/her designee.

#### **21.10 STANDARDS.**

All nonmetallic mining sites subject to this chapter shall be reclaimed in conformance with the standards contained in Subchapter II of Chapter NR 135, Wisconsin Administrative Code.

#### **21.11 PERMIT REQUIRED.**

No person may engage in nonmetallic mining or in nonmetallic mining reclamation without possessing a nonmetallic mining reclamation permit pursuant to Sec. 21.11, unless specifically exempted in Section NR 135.02(1), 135.02(3) or 135.03(16)(b), Wisconsin Administrative Code. The operator of all nonmetallic mining sites shall apply for a reclamation permit from the City Engineer. All reclamation permit applications under this section shall be accompanied by the information required by Section NR 135.18(1) and Section NR 135.18(2), Wisconsin Administrative Code. The application shall be accompanied by a plan review fee as specified in Sec. 21.30.

#### **21.12 RECLAMATION PLAN.**

All operators of nonmetallic mining sites subject to this chapter shall prepare and submit a reclamation plan that meets the requirements of Section NR 135.19, Wisconsin Administrative Code.

#### **21.13 EXISTING PLANS AND APPROVALS.**

To avoid duplication of effort, the reclamation plan required by Sec. 21.12 may, by reference,

incorporate existing plans or materials that meet the requirements of this chapter.

#### **21.14 APPROVAL OF RECLAMATION PLAN.**

The City of Madison shall approve, conditionally approve, or deny in writing the reclamation plan submitted under this section as part of permit issuance pursuant to Sec. 21.17. Conditional approvals of reclamation plans shall be made according to Sec. 21.19, and denials of reclamation plans made according to Sec. 21.20. The operator shall keep a copy of the reclamation plan required by this section, once approved by the City Engineer, at the mine site or, if not practicable, at the operator's nearest office or place of business.

#### **21.15 FINANCIAL ASSURANCE.**

All operators of nonmetallic mining sites in the City of Madison shall prepare and submit a proof of financial assurance of successful reclamation that meets the requirements of Section NR 135.40, Wisconsin Administrative Code. No proof of financial assurance is required for nonmetallic mining conducted by the State of Wisconsin, a state agency, board, commission or department, or a municipality.

#### **21.16 PUBLIC NOTICE AND RIGHT TO HEARING.**

The City Engineer shall provide public notice and the opportunity for a public informational hearing as set forth in Sections NR 135.20(1) and (2), Wisconsin Administrative Code for any nonmetallic mining site for which a complete reclamation permit application that satisfies Sec. 21.11(2) is received, except that no public notice or informational hearing is required for a nonmetallic mining reclamation permit issued to a local transportation-related mine pursuant to Sec. 21.17(2).

#### **21.17 ISSUANCE OF NONMETALLIC MINING RECLAMATION PERMIT.**

- (1) Permit Issuance. Applications that satisfy the requirements in Sec. 21.11(2) shall be issued a reclamation permit or otherwise acted on as provided in Section NR 135.21(2), Wisconsin Administrative Code. The permit shall require compliance with a reclamation plan submitted by the applicant that conforms with Sec. 21.12 and provision by the applicant of financial assurance that conforms with Sec. 21.15, payable to the City of Madison, prior to beginning mining.
- (2) Automatic Permit for Local Transportation-Related Mines. The City Engineer shall issue an automatic permit under this subsection for any borrow site operated to provide material for a locally-administered transportation project that meets the criteria in Section NR 135.23(1)(a), Wisconsin Administrative Code. This automatic permit shall be issued according to the provisions of Sections NR 135.23(1)(b) through (j), Wisconsin Administrative Code.

#### **21.18 EXPEDITED REVIEW.**

Any operator of a nonmetallic mining site may obtain an expedited review of a reclamation permit application by paying the expedited review fee specified in Sec. 21.31. The expedited review shall be carried out according to the provisions of Wis. Admin. Code § NR 135.23(1). Such expedited review shall not waive, shorten or otherwise affect the public notice and right of hearing pursuant to Sec. 21.16.

#### **21.19 PERMIT CONDITIONS.**

Permits issued under this section may include conditions as provided in Wis. Admin. Code § NR 135.21(2). One required condition shall be that new mines shall obtain financial assurance prior to beginning mining pursuant to Wis. Admin. Code § NR 135.40.

#### **21.20 PERMIT DENIAL.**

An application for a nonmetallic mining reclamation permit shall be denied if any of the factors specified in Wis. Admin. Code § NR 135.22 exist.

### **21.21 ALTERNATIVE REQUIREMENTS.**

An operator of a nonmetallic mining site may request an alternative requirement to any reclamation standard established in Subchapter II of Wis. Admin. Code ch. NR 135. Such a request may be made only on the basis of the criteria set forth in Wis. Admin. Code § NR 135.26(1).

- (1) Procedures. The operator of a nonmetallic mining site requesting an alternate requirement shall demonstrate, in written form, that all the criteria in Wis. Admin. Code § NR 135.26(1) are met. After public notice and hearing, the City Engineer shall determine whether the requested alternative meets the requirements of this chapter.
- (2) Transmittal of Decision on Request for Alternate Requirements. The decision on a request for alternative reclamation requirements shall be in writing to the applicant and shall include documentation of why the alternative requirement was or was not approved.
- (3) Notice to Wisconsin Department of Natural Resources. The City of Madison shall provide notice to the Wisconsin Department of Natural Resources as provided in Wis. Admin. Code § NR 135.26(3)(a).

### **21.22 PERMIT DURATION.**

A nonmetallic mining reclamation permit issued under this chapter shall last through operation and reclamation of the nonmetallic mining site, unless suspended or revoked pursuant to Sec. 21.25, or as limited under Wis. Admin. Code § NR 135.27 where the mine operator is not the landowner.

### **21.23 PERMIT TRANSFER.**

A nonmetallic mining reclamation permit issued under this chapter shall be transferred to a new owner or operator upon satisfaction of the conditions in Wis. Admin. Code § NR 135.28.

### **21.24 PERMIT MODIFICATION.**

A nonmetallic mining permit may be modified as follows:

- (1) Request of the City of Madison. If the City Engineer finds that, because of changing conditions, the nonmetallic mining site no longer is in compliance with this chapter or the applicable reclamation ordinance, it shall issue an order modifying the permit in accordance with Wis. Admin. Code § NR 135.24.
- (2) Request of the Operator. If operator of any nonmetallic mine that holds a reclamation permit issued under this chapter desires to modify such permit or reclamation plan approved under this chapter, it may request such modification by submitting a written application for such modification to the City Engineer. The application for permit or plan modification shall be acted on using the standards and procedures of this chapter.
- (3) Required by the Operator. The operator of any nonmetallic mine that holds a reclamation permit issued under this chapter shall request a modification of such permit if required under the circumstances set out in Wis. Admin. Code § NR 135.27. Such application for permit modification shall be acted on using the standards and procedures of this chapter.

### **21.25 PERMIT SUSPENSION OR REVOCATION.**

The City Engineer may suspend or revoke a nonmetallic mining reclamation permit issued pursuant to this chapter if he/she finds any of the grounds listed in Wis. Admin. Code § NR 135.25(1). If the City Engineer finds grounds for suspending or revoking a nonmetallic mining reclamation permit, he/she may issue a special order suspending or revoking such permit as set forth in Sec. 21.40. The consequences of an reclamation permit suspension or revocation order shall be as set forth in Wis. Admin. Code § NR 135.25(2) and (3).

### **21.26 REVIEW.**

Any permitting decision or action made by the City Engineer under this chapter may be reviewed as set forth in Wis. Admin. Code § NR 135.30.

**21.27 ANNUAL OPERATOR REPORTING.**

Operators of nonmetallic mining sites shall submit annual reports that satisfy the requirements of Wis. Admin. Code § NR 135.36 to the City Engineer. These reports shall be for reclamation during a calendar year, and submitted in writing within sixty (60) days of the end of each calendar year. Annual reports shall be submitted until reclamation at each nonmetallic mining site is certified as complete under Sec. 21.35.

**21.28 INSPECTION IN LIEU OF REPORT.**

The City Engineer may, at his/her discretion, obtain the information required to be submitted by the operator of a nonmetallic mining site in Wis. Admin. Code § NR 135.36 by written documentation of an inspection by the City Engineer during a calendar year, as set forth in Wis. Admin. Code § NR 135.36 (4).

**21.29 RETENTION OF ANNUAL REPORTS.**

Annual reports submitted under this section or inspection records that replace them shall be retained by the City Engineer for at least ten (10) years after the calendar year to which they apply. These records, or accurate copies of them, shall be made available to the Wisconsin Department of Natural Resources upon written request or during its inspection or audit activities carried out pursuant to Wis. Admin. Code § NR 135.

**21.30 PLAN REVIEW FEES.**

A person who intends to operate a nonmetallic mining site for which a permit application has been submitted under Sec. 21.11(2) shall submit a non-refundable plan review fee as set forth in Table 3 of Wis. Admin. Code § NR 135.39(5). No plan review fee may be assessed under this section for any nonmetallic mine site for which an application for any local transportation-related mine issued an automatic permit under Sec. 21.17(3). A separate plan review fee shall be paid under this section for any modification to an existing reclamation plan submitted pursuant to Sec. 21.24.

**21.31 EXPEDITED PLAN REVIEW FEE.**

A person who intends to operate a nonmetallic mining site for which a permit application has been submitted under Sec. 21.11(2) may obtain expedited reclamation plan review by paying a fee of five hundred dollars (\$500). Such fee shall be in addition to that required in Sec. 21.30.

**21.32 RELATION TO ANNUAL FEE.**

Any reclamation plan review fee or expedited reclamation plan review fee shall be added to and collected as part of the first annual fee collected under Sec. 21.33.

**21.33 ANNUAL FEES.**

Operators of all nonmetallic mining sites subject to reclamation permits issued under this chapter shall pay annual fees to the City of Madison. Fees paid under this section shall include both a share for the Wisconsin Department of Natural Resources and a share for the City of Madison. Fees shall be calculated based on the number of unreclaimed acres of each site according to Wis. Admin. Code § NR 135.39(1)(a). The annual fee under this section shall be as set forth in Table 2 of Wis. Admin. Code § NR 135.39(4), plus an additional eighty-five dollars (\$85). Such fees apply to a calendar year or any part of a year in which nonmetallic mining takes place, until final reclamation is certified as complete under Sec. 21.35. Fees shall be paid no later than January 31 for the previous year. Fees paid under this section shall include a share for the Wisconsin Department of Natural Resources equal to the amount specified in Wis. Admin. Code § NR 135.39(3) and shall be forwarded to the Wisconsin Department of Natural Resources by March 31. For sites on which no nonmetallic mining has taken place during a calendar year, fees to be paid under this section for the following year shall be \$15. This ordinance shall be effective February 1, 2011.

**21.34 REGULATORY REPORTING AND DOCUMENTATION.**

The City Engineer shall send an annual report to the Wisconsin Department of Natural Resources including the information required by Wis. Admin. Code § NR 135.37 by March 31 for the previous year. The City Engineer shall, to the best of its ability, maintain the information set forth in Wis. Admin. Code § NR 135.47(3), and make it available to the Wisconsin Department of Natural Resources for that agency's audit of the City of Madison's reclamation program pursuant to Wis. Admin. Code § NR 135.47.

**21.35 COMPLETED RECLAMATION-REPORTING AND CERTIFICATION.**

The operator of a nonmetallic mining site shall certify to the City Engineer completion of reclamation for a portion or all of the nonmetallic mining site as specified in the reclamation plan prepared and approved pursuant to this chapter and Wis. Admin. Code § NR 135. In addition, the operator of a nonmetallic mining site may report completion of interim reclamation as specified in the reclamation plan for the site prepared and approved pursuant to this chapter and Wis. Admin. Code § NR 135. The City Engineer shall inspect a nonmetallic mining site for which reporting of reclamation or interim reclamation has been submitted within sixty (60) days of receipt of the certification, and make a determination in writing in accordance with Wis. Admin. Code § NR 135.40(7)(c). If it is determined that interim or final reclamation is complete, including revegetation as specified in a reclamation plan, the City Engineer shall issue the mine operator a written certificate of completion.

**21.36 EFFECT OF COMPLETED RECLAMATION.**

If reclamation is certified by the City Engineer as complete for part or all of a nonmetallic mining site, then:

- (1) No fee shall be assessed under Sec. 21.33 for the area so certified.
- (2) The financial assurance required by Sec. 21.15 shall be released.

**21.37 EFFECT OF INACTION FOLLOWING REPORT OF COMPLETED RECLAMATION.**

If no written response as required by Sec. 21.35 for an area of the mine site reported as reclaimed or interim reclaimed is given within sixty (60) days of receiving such request, any annual fee paid to the City of Madison shall be refunded.

**21.38 PERMIT TERMINATION.**

When all final reclamation required by a reclamation plan is certified as complete pursuant to Sec. 21.35, the City Engineer shall issue a written statement to the operator of the nonmetallic mining site, thereby terminating the reclamation permit.

**21.39 RIGHT OF ENTRY AND INSPECTION.**

For the purpose of ascertaining compliance with the provisions of Subchapter I of Wis. Stat. ch. 295, Wis. Admin. Code ch. NR 135, or this chapter, any authorized officer, agent, employee or representative of the City of Madison may inspect any nonmetallic mining site subject to this chapter as provided in Wis. Stat. § 295.17(1) and Wis. Admin. Code § NR 135.42.

**21.40 ENFORCEMENT ORDERS.**

The City Engineer may issue orders as set forth in Wis. Admin. Code § NR 135.43(1)(a), (b), or (c). An order issued under this section may be reviewed as provided in Wis. Admin. Code § NR 135.43(2).

**21.41 PENALTY.**

As specified in Wis. Stat. § 295.19(3)(a), any person who violates Sec. 21.10, may forfeit not less than twenty-five dollars (\$25) nor more than one thousand dollars (\$1,000) for each violation. Any person who violates any other provision of this Chapter may forfeit not less than ten dollars (\$10) nor more than five thousand dollars (\$5,000) for each violation. For any violation, each day of continued violation

is a separate offense. While an order is suspended, stayed or enjoined, a penalty does not accrue."